

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

vs.

08-CR-21

TODD J. BROXMEYER,

Defendant.

-----X

VOLUME III

TRANSCRIPT OF JURY TRIAL

held in and for the United States District Court,
Northern District of New York, at the Federal Building,
15 Henry Street, Binghamton, New York, on Monday,
September 17, 2008, before the HONORABLE THOMAS J. McAVOY,
Senior United States District Court Judge, PRESIDING.

A P P E A R A N C E S

FOR THE GOVERNMENT: OFFICE OF THE UNITED STATES ATTORNEY
Northern District of New York
15 Henry Street
Binghamton, New York 13901
BY: MIROSLAV LOVRIC, AUSA

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VICKY ANN THELEMAN, RPR, CRR
UNITED STATES DISTRICT COURT

1 (Jury present).

2 THE COURT: Morning, ladies and gentlemen. As
3 I understand it, the government has a final witness for us
4 this morning and we're going to go from there. Mr. Lovric,
5 you want to call your witness, please?

6 MR. LOVRIC: Yes, Judge. Call Mark Denton.

7 THE COURT: Okay.

8 THE CLERK: Sir, please state your full name
9 for the record.

10 THE WITNESS: Mark Denton, D-E-N-T-O-N.
11 MARK DENTON, having been called as a witness, being duly
12 sworn, testified as follows:

13 THE COURT: Okay. Mr. Lovric.

14 DIRECT EXAMINATION

15 BY MR. LOVRIC:

16 Q Good morning, Mr. Denton.

17 A Morning.

18 Q You have to speak up. Okay. Mr. Denton, please
19 tell the members of the jury again your full name and tell us
20 where you work.

21 A My name is Mark Denton and I'm a supervisor for the
22 Law Enforcement Resource Team of Verizon Wireless.

23 Q And Mr. Denton, in your capacity with Verizon
24 Wireless, do you from time to time assist law enforcement
25 with either subpoenas or court orders or search warrants,

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1 things of that nature?

2 A Yes, sir.

3 Q And about how long have you been with Verizon
4 Wireless?

5 A I've been with Verizon Wireless and my current
6 department for the last six.

7 Q And Mr. Denton, in connection with a matter dealing
8 with a Todd Broxmeyer, did Verizon Wireless at some point
9 receive from law enforcement in this area a court order and a
10 search warrant to have Verizon Wireless provide certain
11 documents and information?

12 A Yes.

13 Q Now, prior to coming to court today, did you have
14 the opportunity to look through what I'll refer to as Exhibit
15 1 that's already in evidence that contains a subscriber
16 information document and then a number of photographs and
17 data related to those photographs?

18 A Yes, I did.

19 Q And all of those materials in Exhibit 1, were they,
20 in fact, provided by you on behalf of Verizon Wireless in
21 connection with a law enforcement search warrant and court
22 order?

23 A Yes, they were.

24 Q Now, Mr. Denton, I'd like to briefly just ask if
25 you could just explain to the members of the jury what a

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1 Verizon Wireless Pix account is?

2 A What a Pix -- we call it Pix Place. It's an
3 on-line photo album where you can upload your pictures either
4 off your phone or off a home computer or separate computer so
5 you have them all in one place.

6 Q Okay. And is it a fair statement that it's
7 somewhat akin to an electronic photo album where someone can
8 put all those photos or videos that they want to store and
9 save?

10 A Yes, it is.

11 Q Now, in connection with the Exhibit 1 items that
12 you reviewed, did the subscriber listed, Todd Broxmeyer, in
13 the number that's contained in that document, did he in fact
14 have a Pix account at Verizon Wireless?

15 A Yes, that phone number did have a Pix account.

16 Q And pursuant to the court order, were all of those
17 photographs that are in Exhibit 1 actually retrieved by
18 Verizon Wireless from the Todd Broxmeyer Pix account?

19 A Yes, they were.

20 Q And in examining all of those photographs and the
21 Verizon documentation, were you able to determine from what
22 place those photos came from when they were saved to that Pix
23 account?

24 A Yes. All of the photos that were saved in his Pix
25 Place account actually came from the -- his handset, the

1 piece of equipment, the camera phone.

2 Q Okay. The cellphone that was assigned to Todd
3 Broxmeyer?

4 A Yes.

5 Q And in connection with the Pix account of Todd
6 Broxmeyer, in order to access that Pix account, does the
7 subscriber have to have a password?

8 A Yes, there is a password.

9 Q And how is that typically assigned or how is that
10 password obtained?

11 A Whoever opens the Pix Place account or sets it up
12 will, they'll make up their own password.

13 Q Okay. So the subscriber does that when they first
14 get their Pix account?

15 A Yes.

16 Q And once the subscriber, in this case Todd
17 Broxmeyer, had this Pix account and saved these photos into
18 it, is he then able to view them and access them at will?

19 A Yes. He can either access them straight from his
20 handset or he can actually go to a separate computer.

21 Q Okay. So he can access and view them from both the
22 cellphone and the computer?

23 A Yes.

24 Q Now, the photos that are saved in the Pix account,
25 can those photos also at some point be kept by the subscriber

1 on his or her actual telephone as well?

2 A Yes.

3 Q Okay. Now, what happens if the subscriber keeps
4 them on his phone, just on his handset, do they still remain
5 in the Pix account?

6 A Yeah. There's only a certain amount of memory on a
7 phone, that's why I believe Pix Place was created, so you can
8 download your pictures, keep them all in one place for as
9 long as you have the account.

10 Q And just again so I'm clear, Exhibit 1, all the
11 photos came from that subscriber, Todd Broxmeyer's, telephone
12 and saved into the Pix account?

13 A Yes.

14 Q Mr. Denton, I'm just going to show you Exhibit 5.
15 It's a Verizon Wireless cellphone. If you just take a look
16 at that. Is that one of the types or many phones that
17 Verizon Wireless offers to their customers?

18 A Yes, it is.

19 Q And does that phone have camera and video
20 capability?

21 A Yes, it does.

22 Q Can you just holding the phone up just point to
23 show the jury where on the phone the camera lens is located?

24 A If you look right in the center of the upper part
25 of the phone, it's actually the camera lens and --

1 Q That's the front, the front flap of that phone?

2 A Right. There's a little circle, if you will.

3 Q Okay.

4 A Right at the top, and that's actually the lens.

5 And then to actually take pictures, there's buttons on the
6 inside which have a camera and a video camera on it which you
7 can choose which you want to take.

8 Q And that phone, Exhibit 5, is it capable of taking
9 both photographs and short video clips?

10 A Yes.

11 Q And finally Mr. Denton, I'd like to show you
12 Government Exhibit 13 in evidence. And if you could take a
13 look at that. Are those -- excuse me. Is that Exhibit 13
14 part of materials that were provided by Verizon Wireless to
15 the law enforcement agencies pursuant to that court order and
16 search warrant?

17 A Yes, it is.

18 Q In various places in that exhibit where there's a
19 text message, there is a place to the right of the text
20 message that says originator DN. What is the originator DN?

21 A That's the phone number that actually sent the
22 message, or I should say it's the person who actually sent
23 the message. It can come from a computer as well.

24 Q Okay. So if the originator DN has a 570 area code
25 and then a telephone number, what does that tell you as far

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1 as the sender of that text message?

2 A That's the phone that the message came from.

3 Q Okay. And then is there a notation just a couple
4 lines below originator DN that says terminating DN?

5 A Yes, there is.

6 Q What does terminating DN stand for?

7 A That's the receiver of the text message. That's
8 the person who it was actually sent to.

9 Q Okay. The phone number of the person?

10 A Yes.

11 Q Or the phone of the person?

12 A Correct.

13 Q I take it, Mr. Denton, text messages are sent from
14 phone -- or can be from phone to phone?

15 A Yes.

16 Q So the originator is the sender, the terminator is
17 the receiver of the text?

18 A Correct.

19 Q Okay.

20 MR. LOVRIC: Those are all the questions I
21 have, Judge.

22 THE COURT: Mr. Kilker.

23 MR. KILKER: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. KILKER:

1 Q Morning, Mr. Denton.

2 A Morning.

3 Q Mr. Denton, in your capacity at Verizon, you're a
4 supervisor over the Law Enforcement Resource Center, is that
5 right?

6 A Law Enforcement Resource Team, yes.

7 Q And when a request or a warrant comes in, it's your
8 obligation to go into that specific account for which a
9 warrant has been issued and review that account for its
10 contents, is that right?

11 A Yes, sir.

12 Q And you were able to do that in this particular
13 case?

14 A Yes, sir.

15 Q And you were shown Exhibit Number 1, Government's
16 Exhibit 1, and identified that that was an account that
17 belonged to Mr. Broxmeyer, is that right?

18 A Yes, sir.

19 Q And the contents which are contained in Exhibit 1
20 were taken from his account at Verizon?

21 A Yes, sir.

22 Q Now, when an account comes in and a photo is taken,
23 there's a stamp, am I right, as to the date and time when
24 that photo is received on that camera?

25 A There is a time stamp of when the message was

1 received.

2 Q So, if, for example, a photo was sent to
3 Mr. Broxmeyer's camera, there would be a time/date stamp that
4 would show when that came in, correct?

5 A When he opened it. And that would be saved on the
6 phone itself, not the camera.

7 Q Just by way of example, I'm going to show you a
8 government exhibit and then also the date stamp that's
9 attached to it. Ask if you can explain exactly what you're
10 talking about. I'm going to show you what's been marked as
11 Government's Exhibit 1, page number 7, which is a photograph,
12 and then the corresponding date stamp that apparently goes
13 with that photo. So, the photo would come in, let's say
14 Mr. Broxmeyer opens that photograph, there's the image, and
15 then the date stamp is created at that time. And I don't
16 know if you can see that. Do you see that okay?

17 A Yes. However, in this case this is internal
18 information of when the picture was saved to the Pix Place
19 account. Does not have to do when the photograph was sent to
20 the phone.

21 Q All right. So if we have a date of 11/17/07, then
22 the photo would have been saved to the Pix Place account, not
23 received on the telephone?

24 A Correct.

25 Q So these would be, these numbers here, these dates

1 11/17/07 and 12:44, that would be the date and time this was
2 posted to Pix Place?

3 A Yes.

4 Q And not the actual date that was received on the
5 phone?

6 A No, sir.

7 Q Nor actually the date that that picture was opened?

8 A No. We don't keep any of the media data for the
9 actual pictures.

10 Q Only the data that goes to the Pix Place?

11 A Yes.

12 Q Now with a Pix Place account, if you don't have a
13 camera phone and a photo comes in, let's assume you have a
14 Pix Place account on your Verizon account and somebody sends
15 a photo but you don't have the capability of taking pictures
16 on your account, what happens to that picture?

17 A The photo comes into the phone.

18 Q Photo is sent to the phone but you don't have
19 capability of viewing it on your phone. Can that go into the
20 Pix account?

21 A You can save it to a Pix Place account, yes.

22 Q Will it be saved automatically if nothing is done
23 with that photo?

24 A No.

25 Q You have to actually place it into the Pix account?

1 A Yes.

2 Q And those photo images would then be able to be
3 retrieved from a computer or something later on?

4 A The ones that were saved to the Pix Place account,
5 yes.

6 Q Yes?

7 A Yes.

8 Q Any photo that comes into any phone, whether it has
9 the capability of taking pictures or not taking pictures, can
10 be put into a Pix account?

11 A Yes.

12 Q And you have to manually do that, is that right?

13 A Yes.

14 Q And the storage space that's available on the Pix
15 account itself, how large is that?

16 A I cannot answer that. I do not know.

17 Q The cellphone itself is limited, is that right?

18 A Yes.

19 Q So there would be limited storage space on the
20 phone, which is why many people would get a Pix account?

21 A Yes.

22 Q You had testified earlier that the originator is
23 the person that sends the text message and the terminating
24 person is the one that receives the text message, is that
25 right?

1 A Correct.

2 Q Is there a way to identify when a text message has
3 an attached image to it, is there a special code for that?

4 A In the message content line towards the bottom it
5 would have an MMS, which stands for multiple media system, I
6 believe. It would have, yes, a code at the bottom.

7 Q With regard to Exhibit 13, and I'll just show it to
8 you to refresh your recollection, in those -- that particular
9 exhibit contains text messaging, is that right?

10 A Yes, it does.

11 Q And you can tell, based upon what you have just
12 testified to regarding the originator and terminating
13 receiver, who sent and who received those messages?

14 A Correct.

15 Q Are you able to tell which one of those messages or
16 if any of them have an image attached to them based on what
17 you see there?

18 A I would have to look through it.

19 Q I'm not going to ask you specifically which ones;
20 just in general.

21 A Yeah, in general, yes, we would be able to tell.

22 Q And again, how do you tell?

23 A There's codes within the message delivered that a
24 picture has been sent.

25 Q So it says picture has been sent or does it have a

1 code?

2 A It has codes.

3 Q Do you know what those codes are?

4 A I do not.

5 Q So, we can't tell the jury today what those codes
6 would be regarding an image that might be on there?

7 A They're long strings, which it has an MMS code, it
8 will actually say MMS.

9 Q Does that differ from text messages where a number
10 is sent or the number is called and you can see on your bill,
11 for example, that here's a sender, here's a receiver, what
12 number was being called, or if it's an incoming call and
13 there's a code that identifies a message, whether it's mobile
14 to mobile or something along those lines? Is there a
15 separate code for those calls if there's a text message
16 attached to it?

17 A On the bill?

18 Q On the bill.

19 A I'm not sure.

20 Q Does Verizon have codes on their bills that would
21 identify whether images are on those text messages or not?

22 A There is a summary how many text messages have been
23 sent.

24 Q And does that also give a summary of images that
25 were sent?

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1 A I'm not sure.

2 MR. KILKER: That's all I have, Judge.

3 THE COURT: Mr. Lovric, anything further?

4 MR. LOVRIC: No, your Honor.

5 THE COURT: Okay. Thank you, Mr. Denton. You
6 may step down, sir.

7 (Witness excused).

8 THE COURT: Mr. Lovric, does the government
9 have any further witnesses?

10 MR. LOVRIC: No, your Honor, we rest.

11 THE COURT: Government rests?

12 MR. LOVRIC: Yes.

13 THE COURT: Ladies and gentlemen, you want to
14 step aside for a couple of minutes while we take care of some
15 legal matters and get you back in here?

16 (Jury excused).

17 THE COURT: All right. Mr. Kilker, do you
18 wish to make any motions at the close of the government's
19 proof?

20 MR. KILKER: I do, your Honor. At this point
21 I'd like to make a Rule 29 motion for judgment of acquittal.
22 More specifically, on Count One, Count Two, and Count Four.

23 With regard to the production of child
24 pornography, the defendant has been charged with: Between in
25 and about January of 2007 through December of 2007, in the

1 Northern District of New York and elsewhere, Todd Broxmeyer,
2 the defendant herein, did knowingly and willfully employ,
3 use, persuade, induce, entice and coerce a minor, whose
4 identity is known to the grand jury, to engage in sexually
5 explicit conduct for the purpose of producing visual
6 depictions of such conduct and said visual depictions were
7 produced using materials that had been mailed, shipped and
8 transported in interstate and foreign commerce by any means,
9 in that, during that same time period, the defendant, Todd
10 Broxmeyer, caused the photographing of a minor female engaged
11 in sexually explicit conduct, with the use of a camera which
12 was manufactured outside the State of New York, and each such
13 image is a separate count of this indictment.

14 Count One contains photo number 1,
15 Government's Exhibit Number 1, Alesha Widdall. Count 2
16 contains photo number 2, Exhibit Number 1, Government
17 Exhibit, also Alesha Widdall. Alesha Widdall specifically
18 testified that while she was 17 at the time, she never --
19 Mr. Broxmeyer never employed, engaged, induced, enticed or
20 otherwise asked her for any photographs whatsoever. She
21 indicated that she voluntarily sent photos to Mr. Broxmeyer
22 and that she did it of her own free will and without any
23 coercion or inducement by Mr. Broxmeyer.

24 Now, the government had raised an issue with
25 respect to this competition that apparently Mr. Broxmeyer and

1 Miss Widdall involved themselves in, whereby Mr. Broxmeyer
2 sort of bet Miss Widdall that she couldn't get pictures of
3 women's breasts or sexually explicit photos. And Miss
4 Widdall went out on her own and took a photograph of Brittany
5 Branco, or accepted a photograph, convinced Brittany Branco
6 to send her a photograph of herself in whip cream, not in
7 sexual explicit pose but covered with whip cream. That photo
8 is then sent to Mr. Broxmeyer's phone. And that photo was
9 ultimately placed into Mr. Broxmeyer's Pix account.

10 The conversations that Mr. Broxmeyer and
11 Alesha Widdall had prior to those photos being sent were not
12 that of a person who was attempting to get child pornography
13 or have a child engage in sexual activity, but rather an
14 adult, as Miss Alesha Widdall indicated, that he had no idea
15 what kind of pictures she was going to send but assumed that
16 they would be adult photographs. Alesha Widdall also
17 indicated that she may have been 18 when that photograph was
18 taken, ultimately sent to Mr. Broxmeyer, and therefore she
19 wouldn't be a minor anyway.

20 The inducement, even if one were to assume
21 that Mr. Broxmeyer sent his penis, copy of his penis to
22 induce the girls to send him photographs, the inducement
23 we're talking about in Counts One and Two is photo 1 and 2,
24 and Alesha Widdall indicated those photos were sent freely,
25 voluntarily and without any inducement. And the photo that

1 she asked that we talked about regarding Mr. Broxmeyer's
2 penis was at Miss Widdall's request for an art project that
3 she testified. So that was not an inducement. So for those
4 reasons, your Honor, we're asking that the Court acquit
5 Mr. Broxmeyer of Counts One and Two of the indictment.

6 With respect to Count Four of the indictment,
7 that charges Mr. Broxmeyer with transporting a minor in
8 interstate commerce to engage in sexual activity. In and
9 about December of 2007, in the Northern District of New York
10 and elsewhere, the defendant, Todd Broxmeyer, knowingly
11 caused a minor, whose identity is known to the grand jury and
12 who was at the time under the age of 18 years, to be
13 transported in interstate commerce from the State of
14 Pennsylvania into and through New York State, and then back
15 again from New York State to Pennsylvania, with intent that
16 the minor engage in sexual activity for which conduct can be
17 charged with a criminal offense pursuant to state statutes.
18 In violation of Title 18, United States Code, Section
19 2423(a).

20 The evidence is crystal clear how that minor,
21 Kayla Mueller, got to New York State. She's a resident of
22 Pennsylvania, she was engaged in the practice of field
23 hockey. She insisted that she wanted to go to the field
24 hockey practice so that she could better her skills and her
25 father wanted to accommodate her. The problem with the

1 transportation was that the father had a First Holy Communion
2 on that Sunday and could not then return the child back home,
3 so she was going to rely -- or, he was going to rely on the
4 services of her friend Katie Bendick (sic) or her mother to
5 bring her back. When the child, Kayla Mueller, arrived in
6 New York State, she went to the practice as planned, she then
7 stayed overnight at her friend Katie Bendick's and there was
8 some conversation on that Saturday before Mr. Mueller
9 returned to Pennsylvania that Mr. Broxmeyer had to be down in
10 New Jersey the following day for an additional practice and
11 would be going right on by the Mueller home and it would
12 simply make sense for him to drop her off. Everybody agreed
13 that was a good idea. And Mr. Broxmeyer thereafter agreed to
14 transport the young Mueller to Pennsylvania back from the
15 practice.

16 On the way he stopped at the sports complex
17 where Miss Mueller says that Mr. Broxmeyer sexually assaulted
18 her. Thereafter they traveled to Pennsylvania. The purpose
19 of the travel was not to engage in sexual activity, and
20 there's no evidence Mr. Broxmeyer's intent when that child
21 was transported up to New York State -- that the intent was
22 she come for practice, not that he intended to engage in any
23 sexual activity with her. There's no evidence to suggest
24 that was the case. That he either conspired with somebody,
25 especially not Mr. Mueller, who's the father of the child, or

1 engaged in any sort of covert operation to get her up here so
2 he could engage in sexual acts with her.

3 The Mann Act was put into place to prevent
4 prostitution, crossing of state lines for young girls and
5 then bringing them back to the state where they originated
6 from. This is not the type of case that was envisioned by
7 the Mann Act. What we have here is simply, if you believe
8 the sexual act occurred, an act that occurred solely within
9 the State of New York, once that act is completed, it's over,
10 and the intent whether it was formed there or not, it was not
11 formed before the transportation took place.

12 Now, there was some limited testimony from the
13 father that a couple days before there were conversations
14 with Mr. Broxmeyer that he would transport the child back,
15 and in that limited setting Mr. Mueller claimed I don't
16 remember the exact date or time but we had a conversation
17 about it. And Kayla Mueller recalls that being on that
18 Saturday. That very Saturday that it was just a passing
19 thing, you know, Mr. Broxmeyer says, well, I can give you a
20 ride, I'm going right on by, and then arrangements were made
21 and plans were changed. And ultimately Mr. Broxmeyer
22 transports her back to the State of Pennsylvania and goes on
23 to New Jersey.

24 So for those reasons, your Honor, we believe
25 that the government has failed to meet the elements of Counts

1 One, Two and Four, and ask that the Court enter a judgment of
2 acquittal.

3 THE COURT: Mr. Lovric.

4 MR. LOVRIC: Judge, we object, obviously. I
5 don't want to belabor the point, these are all arguments for
6 the jury to consider. This case rests on factual
7 determinations. There's more than enough evidence for the
8 jury to conclude and for any reasonable person to conclude
9 that Mr. Broxmeyer did, in fact, manipulate and persuade and
10 use Alesha Widdall in order for the photographing of pictures
11 of herself.

12 Photo 1 and 2 are pictures that she took. She
13 took them during the sexual relationship she had. It is our
14 view, and I believe the jury can conclude, that she was used
15 by Mr. Broxmeyer in every sense of the word and that she was
16 induced. Mr. Broxmeyer didn't have to send her a written
17 letter and sign it in blood asking for naked pictures of
18 herself, but he essentially did that through his conduct and
19 relationship with her. And there's more than enough evidence
20 for the jury to conclude that.

21 There are other images that the jury can
22 conclude lead them to conclude that Mr. Broxmeyer's MO here,
23 when you look at the entirety of the conduct with the other
24 girls as well and the circumstantial evidence, that that was
25 his thing. He basically in different ways with different

1 girls got them, persuaded them to take pictures of
2 themselves, some of those pictures being what constitutes
3 child pornography, and sending to him. So these are issues
4 of fact, I submit, and there's more than enough facts in the
5 record. It's clear that Alesha Widdall was 17 at the time
6 that all the photos of her were taken.

7 Count Four, I believe the evidence is more
8 than sufficient to support not only the transport but the
9 causing of transporting of a minor. It's clear from
10 Mr. Lance Mueller about two days before the actual practice
11 that it was Mr. Broxmeyer that said I'll drive her back to
12 Pennsylvania, after actually another family had volunteered
13 to take her halfway down. So, we object to any of the counts
14 being dismissed. They all should be decided on the facts by
15 the jury.

16 THE COURT: Well, it sounds to the Court after
17 listening to the evidence that there probably are factual
18 issues here, especially with respect to Count One and Two.
19 The Court is going to reserve on those, however.

20 And as to Count Four, the Court believes that
21 there's sufficient evidence for the jury to convict on that
22 count, should it decide to do so. The Court will deny Count
23 Four, give you an exception on that.

24 Now, Mr. Kilker, what do you got for the
25 defense case?

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1 MR. KILKER: We're not going to put on a
2 defense case, your Honor. We rest.

3 THE COURT: All right. Now, have you
4 discussed with Mr. Broxmeyer that he has a right to testify
5 here at this Court, if he so chooses?

6 MR. KILKER: Yes, your Honor, I have. And he
7 waives that right.

8 THE COURT: Mr. Broxmeyer, do you understand
9 you have a right to take the stand and testify, if you so
10 choose?

11 TODD BROXMEYER: Yes, sir.

12 THE COURT: You wish to remain silent, which
13 is also your right?

14 TODD BROXMEYER: Yes, sir.

15 THE COURT: Want to bring the jury back in?
16 Are you ready for final argument?

17 MR. LOVRIC: Yes, Judge.

18 THE COURT: Good.

19 MR. KILKER: Can we have a couple minutes
20 before we jump into final argument?

21 THE COURT: How long would you like?

22 MR. KILKER: Fifteen minutes.

23 THE COURT: Fifteen minutes. Okay. Tom, tell
24 her not to bring the jury in. We'll adjourn for 15 minutes
25 at the request of counsel.

1 (Short break taken).

2 (Jury present).

3 THE COURT: All right, ladies and gentlemen.

4 The Court is going to tell you now that the evidence is
5 closed. That means you've heard all the evidence in the case
6 that you're going to hear and it's going to be your task now
7 to reach a verdict after we go through a couple of
8 procedures.

9 The first of which is going to be the closing
10 arguments given to you by both sides, the prosecution and the
11 defense. And I know you've heard me say on Monday and you're
12 going to hear me say again that the burden of proof always
13 remains on the government. It never shifts to the defendant.
14 The defendant has absolutely no obligation to prove anything
15 or to testify, as I told you. And that is a reason why in
16 the federal system the government will give you its closing
17 argument first, then the defendant gets a chance to give you
18 his argument, and then the government has a brief rebuttal
19 summation. And that's the way it works because the
20 government has the burden of proof.

21 Mr. Lovric, are you ready to address the jury
22 with your closing argument?

23 MR. LOVRIC: Yes, I am, Judge.

24 THE COURT: You may do that now.

25 MR. LOVRIC: The clock again. Good morning,

1 everyone. What I'd like to do right now is I'd like to walk
2 you through some of the things that I submit to you will help
3 you to decide the facts and decide the law in this case. And
4 I look at the summation sort of as a conversation that I have
5 with you, although I'll be doing all the talking. But what
6 you can do is you can talk to yourself in your mind as if we
7 were sitting in a room and I was telling you something and
8 you might be adding to the conversation to be able to say to
9 yourself, well, yeah, you know, I remember this and that
10 makes sense and I see how you get that.

11 So, I'd like to have this conversation with
12 all of you. And what I'm going to do is I'm going to present
13 to you my remarks kind as if we were having this conversation
14 and I'm going to rely on you during our conversation to use
15 your good judgment and good sense. I think sometimes juries
16 tend to think that because we're in a court of law and
17 because we walk into a building, that somehow you're supposed
18 to get these magical powers, and it really is nothing like
19 that. Really what we all rely upon is for you to use your
20 good old, as I put it, horse sense.

21 You guys have a lot of life experience. You
22 have a lot of experience from running your family, running
23 your life, running your careers. Don't leave that outside of
24 this room, because when the day is said and it's all done,
25 the thing that will carry you through the most is your good

1 common sense, because when you look at this case with the
2 glasses of your personal common sense, this case will become
3 crystal clear to you what happened here. And I'd like to
4 walk you through that.

5 First, this case is what it is. I can't, nor
6 will I try, to explain Todd Broxmeyer to you. I can't
7 explain to you or give you an analysis of why he is what he
8 is. I can't do that and I don't think you'll be able to do
9 that because, quite frankly, folks, when you look at Todd
10 Broxmeyer sitting over there, and even if you take him
11 outside of the courtroom, and not have to look at him in
12 terms of deciding the facts in this case, you're all going to
13 have to say to yourself, I just can't believe that this guy
14 did what he did.

15 But you know what he did. It is unbelievable.
16 It is beyond belief sometimes what people, real people will
17 do to other real people. And that's just tragic. But, quite
18 frankly, I can't explain him to you and I'm not sure that you
19 could either if you tried. You can try long and hard to
20 figure out why Broxmeyer did the things he did, why he
21 manipulated these girls the way he did. I think I'll point
22 out some motivators for you, but that part of it only Todd
23 Broxmeyer will be able to say in his own mind how he got to
24 where he got.

25 Let me lay some ground work of how and where

1 we started in this evidence and what it shows to you. First
2 of all, when you look at Mr. Broxmeyer, what was he in this
3 picture with these girls and coach and having these girls
4 come from three different states to be coached by him? He
5 had a lot of authority. And when you look at his position,
6 people from New Jersey, people from Pennsylvania, Mr. Mueller
7 told you how Mr. Broxmeyer actually was one of the six people
8 that the United States Field Hockey Association recommended
9 to coach his girl, his daughter. He has a lot of respect and
10 authority out in the field hockey community. And with that
11 respect and authority came lot of trust. A lot of parents
12 put their trust in him. A lot of parents thought this guy's
13 one of the best coaches in the country. He's going to do
14 right by my daughter. He's going to do right by our family
15 and that's why they took their kids to him.

16 And Mr. Broxmeyer's stature, his authority,
17 his power even is somewhat of what led him to be able to do
18 the things that he did. I mean, quite frankly, let's face
19 it, if a stranger off the street wearing a trench coat and
20 looking like a pedophile walked up to Alesha Widdall and
21 said, hey, babe, could you send me a naked picture of you, do
22 you honestly think Alesha Widdall would go home, take off her
23 clothes, go into the shower, put her fingers in her vagina
24 and send that creep a photograph? Of course not. But she
25 did it for that man right there. Look at him. All-American.

1 Nice looking guy, attractive, successful. It was easy for
2 him to do what he did. The creep with the trench coat
3 walking down the street has a little more difficult time
4 attracting girls and having him do sexual things for him.

5 It was that power and trust and authority that
6 allowed Todd Broxmeyer to do what he did. And what is Todd
7 Broxmeyer? Well, I'm not talking about him physically. I'm
8 talking about him and what he did. And I recall when I was
9 growing up, a lot of teachers, and I think my parents even
10 said, you know, when it's all said and done and when you kind
11 of wonder what the world thinks of you and what they see you
12 like, it's really the moments where your actions that you
13 perform that the world isn't looking that tell a lot about
14 you. It's when the world isn't watching you or you don't
15 know that the world is watching when it really says what you
16 are and who you are. It's very easy for somebody to stand up
17 in any place and look presentable and even look respectable.
18 And I think you've been there before where you meet someone
19 and they look like a great person, they sound like a great
20 person, and then you find out a lot about them, what they
21 might have done behind closed doors, and you decide this
22 person is not really what they seem.

23 This Todd Broxmeyer is not what he seems. His
24 outward appearance is not who he is. But when you take a
25 look at what he did when the world wasn't watching behind

1 closed doors, not with parents standing around watching
2 practices, but rather when he had these teenage girls one on
3 one, when he is texting them one-on-one, then you look into
4 the real Todd Broxmeyer's soul, and what you will find if you
5 look at that, look at his actions, look at his conduct, and
6 what you will see is a sexual predator.

7 He is nothing more and nothing less than that
8 creepy sexual predator that we can all spot walking down the
9 street with a trench coat and saying God help us if he ever
10 finds a kid. Todd Broxmeyer is no different because when you
11 look beyond that all-American look and you look beyond the
12 facade, he is nothing but a sex fiend, a predator that preys
13 on teenage girls. And, in fact, Todd Broxmeyer is one of the
14 worst kind of predators because these sleezy trench guys on
15 the street, we can spot them, we can teach our kids to spot
16 them, we can keep children away from them. You can teach
17 your teenage kids what to watch out for. Don't get in a car
18 with a stranger. Don't talk to a stranger. Don't have a
19 stranger give you a ride. We all do that.

20 Mr. Broxmeyer, on the other hand, he's a
21 coach. He is in a position we teach our kids listen to your
22 teachers and coaches. What do we tell them? These are your
23 mentors. These are people in society we expect to give our
24 kids the additional things that we would like them to have.
25 The moral upbringing. Todd Broxmeyer is somebody that

1 parents trusted would be a contributor to that moral
2 upbringing. And the last thing that any one of those parents
3 thought about was that he would, in fact, be that sexual
4 fiend and predator that would prey on their children.

5 Think about it for a minute. He is a
6 37-year-old grown man in 2007. And he is consistently
7 hitting on 15, 16 and 17-year-old girls. A 37-year-old man
8 talking to girls about three-way sex. A 37-year-old man
9 asking teenage girls for photos of themselves. A 37-year-old
10 man collecting, and I do mean collecting, pornographic
11 teenage photographs that he saves in that little vault of his
12 on Pix Place. That is the true Todd Broxmeyer.

13 In fact, as I see it and as I put it to you,
14 he's nothing more than a wolf in sheep's clothing, pretending
15 to be something he's really not. And the worst part about
16 that is that pretending coaching position allowed him to do
17 what he did.

18 And what he did in this case was he persuaded,
19 he enticed, he induced, and above all he used these teenage
20 girls to accomplish everything that's charged in the
21 indictment and plus a lot more. And you look at this -- when
22 you look at this case in terms of -- I can't find my glasses
23 because I don't have my glasses on -- when you look at this
24 case in terms of what he did to these girls and how he viewed
25 them, I submit to you if you step back, you'll see that these

1 girls were nothing more than his personal sex toys. They
2 were nothing more than simply sex objects to him. And why do
3 I say that? Take a look at that Exhibit 1, and what do you
4 see in there? You see nothing but breasts and vaginas. I'm
5 submitting to you that when that man looked at every girl
6 that he coached, he saw a pair of breasts and a vagina. I'm
7 not sure he even recognized them otherwise. How do you know
8 that? Look at that book. What do you keep in your album?
9 Grandma, mom, dad. Take a look at what Broxmeyer keeps in
10 his album. Breasts and vaginas, and that's all these girls
11 were to him. They were pieces of meat that he could nibble,
12 chew on, and enjoy himself whenever it pleased him, and he
13 did it personally with them and then he did it through the
14 photographing of them.

15 To call Mr. Broxmeyer a sexual predator and a
16 sex fiend, I submit to you, is an understatement. He is much
17 more than that. He is the worst kind because he is such a
18 good manipulator. He's very good at it. In fact, he's
19 extremely good at it. In fact, he was so good at it, he
20 never thought he'd get caught. He never for once suspected
21 that one of these girls would turn him in. Think about how
22 easy it would have been. But that's how good he thought he
23 was. He saved these things in his Pix account. He didn't
24 destroy these pictures. It's not like he saved them under a
25 false name. He thought he was very, very good at it. You

1 know what he was very good at it because it went on for quite
2 a long time before somebody uncovered this whole thing.

3 Now, I want to spend a few moments talking
4 about this notion, during the trial the defense asked I
5 believe Alesha Widdall were you coerced? Did you voluntarily
6 do this? Did you voluntarily send these images? Well,
7 ladies and gentlemen, listen to the law carefully. Coercion
8 is only one of several ways that Todd Broxmeyer can be found
9 guilty. Say that again. It's only one of several ways.
10 It's not required and I'm not standing here telling you that
11 these girls were coerced.

12 You might look at somebody like Monica Gombita
13 and perhaps even Katie Thorp and say, well they, were coerced
14 because really he played with their mind. But you know what,
15 forget about that. You don't have to spend a lot of time on
16 that because when the Judge tells you about the law, you'll
17 find that Mr. Broxmeyer can violate these statutes by
18 employing. He didn't employ these girls. There's no
19 question about that. But listen to the other ways. He used
20 minors or he persuaded minors or he induced minors or he
21 enticed minors. So, if persuaded a minor to engage in sexual
22 activity or induced a minor or enticed, or used, any one of
23 those is sufficient to trigger the statute.

24 And I'll talk a little bit about how I submit
25 to you he did all four of those, but when you step back,

1 there's absolutely no reasonable doubt that he used these
2 minors and these aren't magical words. These are everyday
3 common words that you use. He used every one of these kids
4 to accomplish what he set out to do.

5 Count Three talks about the attempted
6 production. And again, it doesn't require coercion as the
7 only way that you can commit this crime. It talks about
8 attempted to use. Attempted to induce. Attempted to
9 persuade. Attempted to entice. The defense would like you
10 to think that coercion and voluntariness negate
11 Mr. Broxmeyer's crimes. And a couple times they asked a
12 couple of the young girls if they were coerced. I ask you to
13 simply forget about the coercion, look at the other four ways
14 that statute can be violated.

15 Let's talk about the voluntariness. I think
16 Mr. Kilker spent a little time with Alesha Widdall. I have
17 the answer for you; it's irrelevant. I'll say it again; it's
18 irrelevant. Minors can't consent to doing this stuff. The
19 statute doesn't require that it be done against their
20 consent. When you think about it, it makes perfect sense.
21 You think child predators couldn't convince a minor to go off
22 with them and take pictures? Mr. Broxmeyer did it. But the
23 creepy old guy on the street walks up to a little girl, gives
24 her a lollipop, come to the park with me, she does voluntary,
25 take off your pants, here's another lollipop, she does

1 voluntary. That's okay, right? No, it's not. The law
2 doesn't care about the fact that the kid wasn't dragged
3 kicking, screaming and duct-taped. The law doesn't care
4 about the fact that Alesha Widdall did it voluntarily. Or
5 that Monica Gombita or the other girls did it voluntarily.
6 It doesn't matter. It's not a part of the crime. Otherwise,
7 it would be ecstasy for Mr. Broxmeyer and the Broxmeyers of
8 the world.

9 Hey, Alesha, I'm going to get you a
10 scholarship into college, but first you have to have sex with
11 me. No problem, Mr. Broxmeyer. No crime. I don't think so.
12 It's still a crime if he persuades her, induces her, entices
13 her, or uses her. So all that stuff with Alesha Widdall,
14 voluntariness or coercion, I submit to you is simply a
15 distraction. That is only one of the ways of coercion. Look
16 at all the others, which make perfect sense.

17 A minor, as you'll learn and already the Judge
18 has told you, is a person under 18 years of age. We protect
19 children whether they're 17 or whether they're one or less
20 than one. A minor is a minor, whether she's 17, 16, 15 or 3
21 months old. It doesn't matter, for purposes of what one
22 person does to that minor. And all the girls that testified
23 here told you that they were minors at the time that these
24 activities and acts happened.

25 You're also going to learn, and I'm not going

1 to talk too much about it, but listen carefully when the
2 Judge talks to you about the charge dealing with using or
3 enticing or inducing. You will hear words that say the
4 following. For the purpose of producing. For the purpose of
5 producing. And then it goes on a visual depiction using
6 materials and so on.

7 And what you will find, if you have a question
8 you can ask the Judge, is that the law doesn't even require
9 me to prove that a visual depiction was in fact produced.
10 Rather, I have to prove that he used, or induced, or enticed,
11 or persuaded minors to engage in explicit sexual conduct for
12 the purpose of producing, regardless of whether that image
13 was ever produced. But I submit to you, there is more than
14 sufficient evidence to show that these things were, in fact,
15 produced. I simply point out to you that what's required for
16 me to prove is for the purpose of producing, not actually
17 producing.

18 At no time are you going to find did I have to
19 show or did the law require that Mr. Broxmeyer took the
20 pictures personally. Rather, that it was for the purpose of
21 producing a visual depiction by anyone, whether it was Alesha
22 or one of the other girls, it's not required that he take the
23 pictures. And I think you can understand the reasoning for
24 that common sense. Because otherwise, pedophiles and
25 predators like Mr. Broxmeyer would always get around that by

1 saying here, little girl, you take the pictures. Here,
2 Alesha, you take the pictures.

3 Now I'd like to mention briefly, and I'll come
4 back to it a little bit later, Count Four. The assault,
5 sexual assault of Kayla. Kayla Mueller. You saw Kayla
6 testify. I don't even think I have to say a lot about what
7 Kayla went through in terms of what happened to her. What
8 became clear from the testimony of Lance Mueller is that it
9 was the only time that he was not going to be present during
10 a practice session and it was the only time that Kayla was
11 going to be at a practice session without either a parent or
12 Lauren, her friend, coming up.

13 And Mr. Mueller actually said to you that
14 arrangements had been made because of their commitment in
15 Pennsylvania for the Bendicks to have Kayla stay over, which
16 she did, and then they were arranging to have the Bendicks or
17 somebody in the family kind of drive her halfway down and it
18 would make it work somehow. And what happened about two days
19 before that? What happened was Todd Broxmeyer saw his chance
20 and said no, no, I'll drive her home. I'll drive her home on
21 Sunday.

22 And I submit to you when you look at
23 everything that Broxmeyer's done here, you can't look into
24 his mind anymore than I can so you can't go into his mind and
25 say what was his intent? But this is where I tell you step

1 back, step back and use your common sense. What's really
2 Todd Broxmeyer doing when he learns that Kayla's going to be
3 at practice, her dad is not going to be there, another parent
4 is not going to be there and she's going to be up in the
5 area? What does he do? He steps in and decides, hey, great
6 opportunity. Great opportunity for me to have a little fun.
7 And what's a little fun that I always do with these girls,
8 and he takes advantage of that. And the first thing that he
9 does when he picks her up on Sunday morning, he drives her
10 over to the Sportsplex and has her commit oral sex on him.
11 He has a 15-year-old girl perform oral sex on him.

12 I'd like to talk a little bit about Monica
13 Gombita. Monica testified and told you she was 17 years old
14 at the time when she was taking these lessons and practice
15 sessions of Mr. Broxmeyer's. And you know what happened with
16 Monica. And if you really think about it, and you step back
17 and remember her testimony, Monica, like Katie Thorp, was
18 seduced. What does Todd Broxmeyer start to do with her?
19 Hey, you're beautiful. You're sexy. You've got a really
20 nice body. Starts to pay attention to her. Starts to
21 compliment her. What's he doing there? He's using her.
22 He's starting to persuade her. He's starting to entice her.
23 He's starting to induce her to do what he eventually wants to
24 happen. He's pouring on these compliments that Monica told
25 you when she's in high school she's really not used to

1 getting a lot of attention from boys, and that's exactly what
2 he sees in her. Broxmeyer sees that and knows this is
3 somebody that he can work his pedophilia routine on. So he
4 starts to put these kind of things in her head.

5 What does he do then? He sends her a text
6 message with his erect penis on it. Think about it, ladies
7 and gentlemen. This man right here has a fully erect penis
8 on his phone in Exhibit 2, so he has it nice and handy when
9 he wants to send it to his, to his teenage girls or teenage
10 people he meets and he has it saved on his Pix account. What
11 do you think that tells you? What's that telling you about
12 him? He then sends Monica the picture of the erect penis and
13 he finally is asking her to send him a picture back. And
14 Monica ends up sending the picture of herself in the
15 underwear essentially because she couldn't find the energy
16 and the strength to bring herself around to send him a full
17 body, nude body photograph of herself. But that's okay with
18 Mr. Broxmeyer. He likes that, too. He saves that into his
19 Pix account.

20 And then what does Mr. Broxmeyer do next? On
21 the way home from a practice session he puts his hand down
22 Monica's pants and fondles her vagina. Enough so that when
23 he's bragging about it to Alesha Widdall. Remember he sends
24 Alesha Widdall the picture of Monica like he just went out
25 and shot a deer, he wants to show it off. He sends to Alesha

1 this photo of Monica, and Alesha who was at that point
2 engaged in a sexual relationship with him, even though she's
3 17, says who is that? And Mr. Broxmeyer tells Alesha it's
4 Monica. And then Alesha, I don't know if you caught it, I
5 wasn't going to get too graphic, even though this case is
6 very graphic, but Alesha asks Broxmeyer does she have a fire
7 crotch? Meaning does she have red pubic hair like her red
8 hair. Mr. Broxmeyer says no, she shaves down there. This is
9 a 37-year-old coach. What do you think is going on when he's
10 doing these things with these kids? It's unbelievable. I
11 mean it is unbelievable. And if it weren't for pictures and
12 text messages and if I was standing in your living room just
13 sitting there and telling you this story, you'd be like,
14 you're out of your mind. People don't do this. Well, he
15 did.

16 Alesha Widdall. She was 15 years old when she
17 met Todd Broxmeyer, and between the ages of 15 and 17 she
18 went and attended various practice sessions. And I submit to
19 you folks, if you take a look at Alesha Widdall, there is one
20 overriding thing that I submit happened in this case. Alesha
21 Widdall was used by Mr. Broxmeyer in more ways than you and I
22 can count. And she was used by him in every sense of the
23 word and the spirit of that word. Look at how he manipulated
24 her. Look at how he used her. Look at what degrading things
25 he did with her and got her to do for him. To talk about

1 enticing, inducing, persuading, he went beyond those words to
2 what he did to Alesha Widdall and with her. Forget about the
3 fact -- I don't mean forget about it, but aside from the fact
4 that he had sexual intercourse with a minor for the better
5 part of her 17th year, having sexual intercourse with her in
6 the apartment that he shares with his girlfriend, having sex
7 with her in California when he's taking all these teenage
8 kids to this festival tournament, aside from that, look at
9 all the other ways he used her, to not only get from her what
10 he wanted but to get her to get him other things that he
11 wanted.

12 When they're having sex, Alesha and him would
13 use her cellphone camera, his cellphone camera to take
14 pictures of the sexual conduct. He sent her, I believe she
15 said, a number of times the erect penis photograph. He used
16 Alesha to do those challenges.

17 Remember she told you about he would challenge
18 her? What do you think is really going on in there? You
19 think this is a sporting event? You think this is a game?
20 Alesha might have thought it was a game, but I've got news
21 for you people, if you sit back and use your good common
22 sense, this was no game to that pedophile. He's using
23 Alesha. I challenge you to get Brittany naked or breasts. I
24 challenge you to get me a picture of so and so with her
25 breasts exposed. I challenge you. He is using her like

1 she's on a string on his finger knowing that he can and
2 knowing that she will. Knowing that she's already fully
3 engaged in his sexual perversion, sexual acts, sexual
4 photographing the two of them. He's not happy with that.
5 And then what does he do with those photos she brings to him,
6 he saves it to his Pix account.

7 He challenges her to the Brittany Branco
8 photo. The Crystal Bianco photo, which is photo number 21 in
9 Exhibit 1. The Branco photo is the photo of the girl with
10 the shaving cream on her breasts and genitalia. What else
11 does Mr. Broxmeyer do to use Alesha Widdall? Remember she
12 describes that New Jersey trip, they go down to practice,
13 they're driving down, and what does this fine gentleman take
14 the opportunity to do? He whips out his cellphone, hey, let
15 me show you some of my stuff and he goes into his Pix
16 account. And he shows Alesha Widdall these pictures.

17 You might ask why is he doing that? Well,
18 I'll answer that for you. It's all a part of the control.
19 It's all a part of, hey, Alesha this is what I like. He
20 doesn't have to say it. He doesn't have to write her a note.
21 He doesn't have to send her a message. He doesn't have to
22 send her a hallmark card saying this is what I like. This is
23 what I want. This is what I want you to get me. This is
24 what I want you to give me. He's much too slick for that.
25 He does it in subtle ways. Hey, look at my Pix account here.

1 Hey, look at a picture of Katie Thorp in her underwear. Hey,
2 look at a picture of Katie with her finger stuck up her
3 vagina. That's what's going on here. And that's how he
4 manipulates, uses, and persuades these girls to do what he
5 wants. A lot of times he doesn't even have to speak the
6 words.

7 Now, he would like you to believe, well, I
8 never signed a contract asking for sexually explicit conduct.
9 Is he for real? He wants you to believe that sexual
10 predators work that way? No. Mr. Broxmeyer is the expert.
11 He is the ultimate sexual predator. He can do it without
12 even saying it, and you know that you've seen that. You can
13 see it through Alesha Widdall. And you know what the real
14 sad thing about this whole case is, Alesha Widdall doesn't
15 think that she was manipulated and used. And you know what?
16 Twenty years from now Alesha Widdall is an adult and when she
17 looks back on this experience, she is going to cry and she is
18 going to be in therapy over what that man did to her because
19 at some point in her life it will dawn on her, it will hit
20 her, I was just a kid. He abused me. He used me, he
21 sexually committed perversion with me. He caused me to go
22 out and to do that perversion to friends and colleagues of
23 mine. And twenty years from now I submit to you she will be
24 very sorry that it happened.

25 And the saddest part is that today she doesn't

1 think so. And why? She's just a kid. She was just a kid
2 when this happened. She was a 17-year-old girl from Whitney
3 Point. Life's experiences, I submit, in Whitney Point are a
4 little different than downtown Chicago. Alesha Widdall had
5 someone that was not only paying attention to her, thought
6 she was the sexiest thing on the planet. Broxmeyer was great
7 looking, all-American. Sexual relationship. Ask yourself
8 where was Broxmeyer going with that relationship? Marriage.
9 Are you kidding? He's going nowhere with it. She's one of
10 his sex toys. He uses her. He abuses her. He uses her to
11 get him things that he wants and when he's done, he's done.

12 So, he shows Alesha Katie Thorp's finger in
13 the vagina. The underwear. He shows her the two girls
14 kissing naked on his Pix account. What does he tell her? I
15 got that from another coach. Gee, it's really wonderful to
16 know, Mr. Broxmeyer, you and coaches' buddies of you are
17 getting pictures of these girls and getting them to do this
18 stuff and you're trading it around the country, that is
19 really wonderful. Girls in the pyramid put that photo in
20 there just to show how far this manipulation goes. He has
21 Brittany Branco send him this picture of girls in their
22 underwear, in a pyramid stack. The whole point of that
23 wasn't that it is child porn. Look at how he manipulates
24 these girls. Look at how he's using them.

25 Now, I paused for a few minutes, I was

1 listening on cross-examination when Mr. Kilker asked Alesha
2 Widdall and I asked her again on redirect, but Mr. Kilker
3 asked Alesha, what did you -- what did you say, or what did
4 Broxmeyer say or what did you think, there was a question. I
5 didn't write down the question verbatim but it had to do when
6 she got these photos on this challenge. It had to do when
7 she got the photos of Crystal Bianco and then the photo of
8 Brittany Branco, similar names, and sent them to Todd
9 Broxmeyer. And here's Alesha Widdall, what she said, and I
10 wrote this down. And I submit to you I tried to get it down
11 verbatim, but if you have a different recollection, rely on
12 your recollection. Alesha Widdall said they made me feel
13 like I did something right. And I asked her when I got up
14 again, I said, what did you say to Mr. Kilker when he asked
15 you about what you were feeling or why you were sending these
16 pictures on these challenges? And she said it again exactly
17 verbatim; they made me feel like I did something right.

18 That is really telling as to what was going on
19 there. What's Alesha Widdall telling you? She probably
20 doesn't even realize what she's telling you. It made her
21 feel like she's doing right for him, like she's doing
22 something that she can stand up and say, yeah, look at this,
23 I'm really there for you, I'm doing something good for you.
24 And I submit to you, what it tells you is Alesha Widdall has
25 a lot of issues going on and one of them is she was looking

1 for Mr. Broxmeyer to pay attention to her, and she was
2 looking for sex, and she was looking for love, and she's
3 looking for all those things that Mr. Broxmeyer wouldn't ever
4 deliver to her, but he used her to make her think that what
5 she was doing was going to make her feel good about herself.

6 And that, ladies and gentlemen I think is
7 about as twisted as it gets. Mr. Broxmeyer cannot only
8 manipulate these girls, but he can actually get them to think
9 and believe something good about themselves by doing that.
10 And that is the ultimate perversion in this case. Alesha
11 Widdall is the ultimate perversion, if I can put it that way.
12 He got her to actually believe that this was somehow making
13 her a better person or her a better girl or woman. She
14 wanted to please him in every way. And she really tried.
15 And that's why she did those challenges. And that's why she
16 engaged in sexual intercourse with him.

17 But you have to say to yourself, look at who
18 she is and look at who is the person that's driving that
19 ship. Who is the person that is making all those things
20 happen? Alesha Widdall. Alesha Widdall wouldn't have done
21 any of this stuff but for the fact that Mr. Broxmeyer was
22 sexually engaged in sexual intercourse with her.

23 And so Alesha Widdall does a number of things,
24 and one of the many things she would do, and I think she told
25 you, she took about 15 photographs, sexual explicit

1 photographs. We have two of them that were saved into
2 Mr. Broxmeyer's Pix account, it's photo 1 and 2 of Exhibit 1.
3 And she would send him these things and Mr. Broxmeyer would
4 like you to believe, well, I didn't ask for those. I didn't
5 say Alesha, send me a naked picture now.

6 And I submit to you he did ask for that. He
7 not only asked for that, he got her to believe that's not
8 only what he wanted but what he expected of her. You have to
9 look at the actions, not just his words. I just mention it.
10 Alesha and Mr. Broxmeyer talking about three-way sex. This
11 is more bizarre. Thirty-seven year old coach talking with a
12 player. I don't care if they were jokingly joking. Talking
13 about three-way sex. What does that tell you about this man?

14 And you know, Mr. Broxmeyer didn't have to
15 tell these girls about scholarships and letters of
16 recommendation. Now, Katie Thorp talked with you about that
17 because he did talk to her back in the fall of 2007. And if
18 you look at it, it was at a time when he wants her to come to
19 the practice sessions and she's playing for Whitney Point,
20 and she's not really sure if she wants to go to practice
21 sessions, and he's really getting her to say yeah, I'll come.
22 I'll be there, I'm coming. He's trying to entice her to come
23 to the practices. And so what does he throw out? Hey, you
24 know, scholarships are out there. I can help you with
25 recommendations, letter recommendations. And you know what,

1 that's in the back of every one of these girls' minds.

2 I'm not saying to you that justifies or in any
3 way makes any of this conduct and their participation in it
4 okay, but you know what, he is the grown man. He knows what
5 these girls will think about just from him mentioning these
6 things. I think all of us have been in positions where we
7 can manipulate a little kid. You do to five, seven, nine
8 years old reverse psychology, don't go in that drawer, they
9 go in the drawer, don't open that present. He manipulated
10 these girls. And out in this kind of fog, he knew this
11 carrot is out there. I can do something for you but you've
12 got to put up with what I like to do.

13 Kayla Mueller, Lance Mueller I'm going to
14 spend very, very little time on. There is no question Kayla
15 Mueller was sexually assaulted by Broxmeyer. He took her to
16 the Sportsplex, had her perform oral sex. She can't even
17 talk about it to this day. She can't even stand and tell
18 someone about it without breaking down in tears, and that's
19 how traumatic it still is even though it happened as far as
20 back as December 8 of 2007. Excuse me, December 9. And you
21 know what, she's probably going to be traumatized for the
22 rest of her life about what happened. Todd Broxmeyer is the
23 worst predator because of what he did to Kayla Mueller. He
24 sexually abused all of these girls in the true sense, but
25 look at what he did to Kayla. He is so good, he took about

1 twenty seconds in his mind, I submit to you, to say Kayla
2 coming up, no parent, no Lauren, needs a ride, I'm there.
3 And that's exactly what happened when he finds out on
4 December 5 or 6 that she needs a ride home.

5 Now, you can't look in his mind anymore than I
6 can, but you know what, step back and look at him as a whole
7 and take a look at all of this other activity surrounding it.
8 Do you think it was just one big coincidence that he decided
9 that morning to go and sexually assault Kayla Mueller at the
10 Sportsplex? Let's see, Sunday morning, 7:00, I've got
11 nothing to do, let me go have Kayla give me a blow job. You
12 think that's exactly how it happened? Absolutely not.

13 He planned that thing two, three days in
14 advance, as soon as he told Lance Mueller I'll bring her
15 home. And that's exactly what he does. He picks her up and
16 the first thing they do is they go to the Sportsplex. And
17 then he drives her from New York State to Pennsylvania.
18 That's a federal crime. He transported that kid across state
19 lines for his own sexual intent of having a sexual act
20 committed.

21 Now, he would like you to think if something
22 happened it was just one big coincidence. Oh, yeah.
23 Mr. Broxmeyer, it's one big coincidence that every teenage
24 girl you come in contact sends you a picture of breasts and
25 vagina. It's just one big coincidence that you abuse Kayla

1 Mueller when she's being transported in interstate commerce.
2 This is all one big coincidence according to this man. I'm
3 sorry. We bother you.

4 What does he do with Kayla before she comes
5 up? Sends her the erect penis photo. I think he should
6 write a book how to win the hearts and minds of teenage girls
7 with a penis because that seems to be his stick. Hey, let me
8 do this. Hey, let me send you this. When you look at him
9 after you've read his book, he's an open book, but these are
10 teenage girls that he's working on. They didn't quite see
11 that table of contents in the book. They couldn't figure him
12 twenty years from now. They'll look back and they'll have
13 figured him out very well. But you know what, folks, you're
14 not teenage girls, 15 through 17. I think you're smarter
15 than that, and I think you can figure him out really well.

16 Sends her the erect penis. What does Kayla
17 tell you? He asked her, I sent you one, you send me one.
18 Sound familiar? Monica, Katie. Katie Thorp testified.
19 Katie Thorp and Monica Gombita almost identical. Katie Thorp
20 playing at Whitney Point thinking about practice sessions.
21 Makes her feel good. Katie told you, I felt special. He
22 made me feel wanted. Tells her she's got a good body,
23 athletic body. Same as with Monica. What's he doing? He's
24 using her. He's laying the ground work to persuade her to do
25 what he wants done. What does he do? He sends Katie Thorp a

1 picture of the erect penis. What is that again? Hey, Katie,
2 this is what I'd like to do. I've sent you one, now you send
3 me one. He doesn't have to say what kind of picture he
4 wants. He says it all with pictures.

5 She sends him a picture first of her in her
6 underwear. And I submit to you that's attempted child
7 pornography production. He wants a naked picture of her.
8 How do you know that? I'll talk to you in a minute about
9 these text messages and you'll hear from Mr. Broxmeyer
10 himself what he wants. Then he convinced her to send the
11 picture of her with her finger in the vagina.

12 I took the liberty of putting tabs on what I'm
13 going to read just so I can find it so I don't waste too much
14 of your time here this morning, but I'd like to read to you
15 just a few of the texts that this man sent to Katie Thorp in
16 the texting. Now, remember, Mr. Denton described the
17 originator DN and then the terminator DN, so when you look at
18 this, you will see originator DN and then terminator DN.
19 Originator is the sender. Terminator is the phone that's
20 receiving the text. And then right below that is the text
21 message.

22 Now, (570)574-7772 is Mr. Broxmeyer's
23 cellphone. How do you know that? Well, here's his Verizon
24 Wireless subscriber information. Jason Ellis testified
25 that's his phone number. Verizon tells you that's his phone

1 number. Mr. Broxmeyer sending to Katie Thorp. You have no
2 idea, I wanted this texting to be about naked pics, not this.
3 I submit, naked pics is naked pictures. Mr. Broxmeyer to
4 Katie Thorp. So, what do you think of the pic? He sent her
5 a picture on this date. He then sends her the next text
6 message, Broxmeyer to Katie: Good, I'm glad you like it.
7 Mr. Broxmeyer to Katie again: Maybe I can get one in return
8 later. Mr. Broxmeyer again later same date: So will I get a
9 payback pic? Mr. Broxmeyer again to Katie: Are you going to
10 be nice or make me beg for a payback pic? He's begging for a
11 picture from her. Mr. Broxmeyer to Katie: Oh, boy, and it's
12 when I believe in you. Oh, boy, have her take of pic of you
13 for me. Mr. Broxmeyer to Katie: Come on, or the two of you
14 with one together. Mr. Broxmeyer to Katie again: So send
15 yours, please. At least he said please this time. Katie to
16 Mr. Broxmeyer: What are you talking about?

17 And if you read a couple of the texts right
18 before then, I didn't go through all of them, he's telling
19 Katie about a picture of her that he has. Mr. Broxmeyer to
20 Katie: You fingering yourself. Picture that's in evidence
21 of Katie with her finger in her vagina. Katie asks
22 Mr. Broxmeyer: Did you delete it from your phone? Katie
23 asks him again: Where's it saved? And you can't make this
24 stuff up, but Mr. Broxmeyer does everything but tell us
25 everything in some of these text messages. Mr. Broxmeyer

1 says to Katie, after she asks him where did you save it, he
2 says to her, Pix Place through my Verizon account for my eyes
3 only. Mr. Broxmeyer to Katie: No worries, I just heard
4 about it. The question still is, where is my payback pic
5 from Katie? How many times has he asked her now for a
6 picture of her? Katie, I don't know. I don't know.
7 Mr. Broxmeyer says to Katie, and it's clear from when you
8 read the text before, she sent him a picture and he says that
9 is hot. But now one with the same pose but no clothes. I'm
10 not saying this. This is what Mr. Broxmeyer is saying to
11 Katie. Mr. Broxmeyer to Katie: Why are you being so
12 difficult?

13 He's not openly persistent, but he's very,
14 very good at this. Katie sends back to Mr. Broxmeyer:
15 Because I'm with my family. Mr. Broxmeyer doesn't let a
16 little family interrupt his sexual prowess, so go to the
17 bathroom he texts back to her. Katie to Mr. Broxmeyer:
18 There's no bathroom in the car, you dork. You said that I
19 didn't. Here's the best one. And you know what, if this
20 wasn't in print and I was sitting here even telling you about
21 this, you'd say, you know what, Mr. Lovric, you've been
22 working a little too hard. Katie says to Mr. Broxmeyer,
23 there's no bathroom in the car, you dork. What does he say
24 to her? See it as a challenge. You remember that challenge
25 word. Alesha Widdall, he would call that a challenge. He

1 would ask to get a boob picture. See it as a challenge.
2 Mr. Broxmeyer is better than an expert. He has perfected
3 predatory practices. He has perfected being a sexual
4 predator of teenage girls. There is an award you can give
5 him, and you can give him, and that award is called guilty on
6 all counts, because he deserves an award for what he did and
7 how he did it to these girls. See it as a challenge. Well,
8 I submit to you folks, why don't you see this as a challenge
9 and send a challenging message to Mr. Broxmeyer.

10 Mr. Broxmeyer: When you get there, when you
11 get where you're going. Wants her to send him a picture when
12 she gets where she's going because she's not going to do one
13 in the car. He asks her: Where are you going? Katie
14 responds: Mall eventually. I don't make this stuff up. You
15 can read it. Mr. Broxmeyer to Katie: Huh huh, funny. Come
16 to the Sportsplex and we can play naked field hockey after 7.
17 I just don't know what to say to that. I really don't.
18 Grown man, trying to entice a 17-year-old kid four days
19 before Christmas when she's going to the mall, probably
20 Christmas shopping, to come to the Sportsplex to play naked
21 field hockey with him. Katie being the more adult: I have
22 too much shopping to do, texts back. Mr. Broxmeyer being the
23 true gentleman that he is texts back: You're no fun.

24 You wouldn't believe that unless you read it
25 and saw it in text message records. And these are just some

1 of the records that were able to be recovered. But you can't
2 make this stuff up, and I said to you in the beginning I
3 can't explain that man. I still can't explain him to you.
4 But what he did here is he used every one of these girls in
5 every way.

6 If you want to look into the mind of
7 Mr. Broxmeyer, take a few moments to look at his albums and
8 take a look at these photographs. Now, when I went through
9 this trial and, you know, to tell you just, you know, very
10 briefly, I was trying to figure out a way before we started
11 this trial how to present these pictures because I have to
12 present them. I have to show them to you and I really do
13 apologize the fact that we had to put them on a screen and
14 show these very demeaning pictures of real human beings and
15 real girls.

16 And you know what? That is about as demeaning
17 as we can be when we have to publish these things, and I
18 apologize, but unfortunately, there is no other way in the
19 criminal justice system. You have to see these because you
20 have to be the one who decides are these child pornography or
21 not. I submit to you they are, but I'm not on a jury. So I
22 tried to figure out the best way, and this is about as best I
23 can come up is put them in these books. I showed you a few
24 that I had to show you. There are hundreds of child
25 pornography images that came off his Gateway computer. You

1 can look at those, you can look at pictures that came off his
2 cellphone. On his cellphone, actual cellphone he had that
3 Brittany Branco photo and then the ever-recurring penis photo.
4 In his Pix account we saw most of those. It's all vaginas
5 and breasts. And when you look at the pictures in this
6 Gateway computer and on his Compaq, that's all you're going
7 to see. He has pictures of teenage girls. You can look at
8 these girls and, quite frankly, you're more capable than
9 anybody in determining do these look like teenage girls or
10 not.

11 And I submit to you when you look at some of
12 those pictures on his computers, it looks like 15, 16,
13 17-year-old girls. Oral sex, anal sex, sexual intercourse,
14 breasts, vaginas, he loves cameras in showers. You'll see on
15 there other pictures where there's a girl taking a picture
16 through the mirror of herself in the shower naked fondling
17 herself. One of the pictures, if you remember Jim Thompson
18 talked to you about, he was able to go back and find what
19 kind of pictures Mr. Broxmeyer was viewing and perhaps
20 downloading, even though they may have not been on a computer
21 anymore. And that's the very first picture in exhibit 3.
22 It's four teenage kids in the shower cupping their breasts,
23 naked otherwise. And you know what? Look at that thing.
24 They look like they're 11 years old. Look at all these other
25 pictures.

1 My point to all of this is: Remember I said
2 to you when the world is not watching, your actions speak
3 louder than any words or any texts that you put out there.
4 Well, Mr. Broxmeyer's real world intent is in these books,
5 because he never dreamed that anybody, let alone a jury in a
6 courtroom, would ever be looking at these, but this tells you
7 what he's interested in. This tells you what he likes. This
8 tells you what he wants. Take a look and see how many family
9 photos you can find in there. His actions in his private
10 little perverse sexual world speak louder than all the words
11 that I can put together or anybody else can put together.

12 The charge in this case, Count One and Two
13 charge production of child pornography. And the Judge will
14 give you the law. Counts One and Two relate to pictures 1
15 and 2 that are found in Exhibit 1. And they're the two
16 pictures of Alesha Widdall. The two pictures that she took.
17 The two pictures that were sent to Mr. Broxmeyer. The two
18 pictures that show her in explicitly sexual conduct. One she
19 has her fingers up her vagina, and those are two pictures
20 that when you listen to the law, doesn't even have to be
21 proven. It's for the purpose. He used, enticed, persuaded
22 Alesha Widdall to engage in sexual conduct for the purpose of
23 producing.

24 But even though it's not required that -- if
25 these pictures had never been found, you could still be able

1 to convict him. If these pictures had not come out, she took
2 them and the camera misfired for some reason, you would be
3 able to convict him. But there they are, and they speak for
4 themselves.

5 And I submit to you, when she sent those
6 photos to him and when he saved them to his Pix account, he
7 was using her, minimally using her. Beyond that, persuading,
8 enticing, inducing absolutely. Alesha Widdall may not think
9 so but Alesha Widdall doesn't answer that question, you do.
10 It doesn't matter if she thinks she voluntarily sent those.
11 Voluntariness has nothing to do with it. Did he, did his
12 actions, not hers, did his actions violate the law? Did he
13 use her? Did he entice or persuade or induce? And you can
14 use the regular definition of those terms.

15 Count Three, attempted production. Take a
16 look at Katie Thorp's picture in the underwear. What is he
17 doing when she sends him the underwear picture? He's begging
18 for a photo. He's begging her. He's begging her like the
19 dog he is. He just wants. Where's my pic? Are you going to
20 send it to me? What is it that he wants? He says what he
21 wants. Yes, but now without the clothes on. Are you going
22 to send to me are you going to make me beg? On and on and on
23 it goes.

24 That's attempted production of child porn.
25 She's 17 years old. He's begging for pictures, he's begging

1 for pictures from her. He begs for pictures from Monica. He
2 begs for pictures from Kayla. He didn't have to really beg
3 from Alesha because she was able to do it very quickly and
4 very, very subtly because Alesha was ready, willing and able
5 to do what he wanted done. Again, it's his conduct, not
6 hers.

7 Count Four, the transportation of a minor. He
8 transported Kayla Mueller from New York State to
9 Pennsylvania. That's interstate transportation. What was
10 his intent? I submit to you when you look at that, you look
11 at everything else that's going on around, he had her
12 transported, and he transported her back so he can have a way
13 with her without anybody there to interfere. Feeling very
14 confident that he could keep her quiet, just like he kept the
15 others quiet.

16 And something interesting that Lance Mueller
17 testified about. Remember those phone records? Text
18 messaging December 9, 160 messages from Todd Broxmeyer and
19 thereafter. What's going on there? Todd Broxmeyer is not
20 stupid. He wants to make sure Kayla doesn't tell anybody.
21 Not only does he tell her not to tell anybody, but he's going
22 to work his magic. He's going to get her to stay quiet. And
23 you know what? It worked for a long time. And when does
24 Kayla Mueller tell her family what he did to her? On
25 Christmas Eve. I'd like you folks to think about the amount

1 of courage that it took for Kayla Mueller on Christmas Eve to
2 tell her mother and father that he had her perform oral sex
3 on him.

4 The possession count. There's really no question
5 when it comes to possession of child porn. Everything he had
6 that he possessed, whether physically or in the Pix account,
7 and the Judge will tell you what possession means, but
8 there's no question he possessed child porn. He possessed
9 all the photos sent to him by the girls on his phone. He
10 then possessed them when he saved them to his Pix account.
11 He then possessed the computers that had all the child
12 pornography on them.

13 Remember I mentioned the iPod? As I said to you,
14 there's a good reason I didn't introduce those videos. First
15 of all, I didn't think it was necessary. I thought it was
16 degrading to watch Mr. Broxmeyer perform oral sex on a girl.
17 I had Jason Ellis tell you about what he viewed, and the
18 importance of that is in one of the videos you can see
19 Mr. Broxmeyer's face in between the girls' legs at least
20 performing oral sex on her and his face pops up, and Jason
21 Ellis told you it's clear that's Mr. Broxmeyer.

22 Mr. Broxmeyer loved videotaping, photographing. He
23 loved the visual trophies. How do you know that? Well,
24 there they are. There's all his trophies. And they're in
25 the form of pictures, in the form of videos, and they tell

1 you everything you need to know about who this man really is.

2 Mr. Broxmeyer is a child predator. He may not
3 think so but, quite frankly, I really don't care what he
4 thinks. He is a sexual predator. He preys on teenage girls.
5 He manipulates them. And he's able to do it extremely well.
6 But you know what, folks? You can put a stop to that. You
7 can stop this sexual predator and stop him in his tracks, and
8 the way you can do that is you can bring back and give him a
9 challenge. Bring back a guilty verdict on each count and
10 give him the challenge, go and serve your time for all the
11 things that you've done to these girls. And he deserves it.
12 He deserves everything he has coming to him.

13 And I'm not so sure that that's going to be enough
14 to put these girls' lives ever back on track. I'm not so
15 sure that anybody can and, unfortunately, the criminal
16 justice system doesn't always have the capability of bringing
17 true justice to a victim. And all these girls are victims,
18 Alesha Widdall and the rest. We do the best we can. We do
19 the best we can to bring some peace and some finality to a
20 victim's harms. And in this case, like in all cases, the
21 best you can do is to have him found guilty and have him pay
22 for his crimes.

23 So, I ask when you deliberate, go back to the jury
24 room, put on your common sense. And I'm asking you to find
25 him guilty of all the counts.

Government - Summation

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1 THE COURT: Thank you, Mr. Lovric. Ladies and
2 gentlemen, we're going to take a break now. See counsel over
3 here at side-bar.

4 (Jury excused).

5 THE COURT: It's noon. Miro gave, of course,
6 his briefest summation possible, but for you to start now,
7 and their lunch is coming at 12:30, what do you want to do?
8 You can do it or you can wait until after lunch so the thing
9 isn't broken, or you can give half before, half after.

10 MR. KILKER: Why don't we wait until after
11 lunch?

12 THE COURT: After lunch. Okay. I'll go back
13 with the stenographer and tell the jury the lunch is coming
14 at 12:30, we didn't want to start another long procedure at
15 this point, and you can sum up after.

16 MR. KILKER: That would be great.

17 (Jury Room).

18 THE COURT: Okay. We've decided to hold off
19 on summations until you've had your lunch, which will be here
20 shortly.

21 (Lunch break taken)

22 (Jury present).

23 THE COURT: Okay. Mr. Kilker, are you ready
24 to give your summation to the jury?

25 MR. KILKER: Yes, your Honor.

Mr. Kilker - Summation

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1 THE COURT: All right. You may do that.

2 MR. KILKER: Thank you, your Honor. May it
3 please the Court, counsel, good afternoon ladies and
4 gentlemen. Hope you all enjoyed your lunch.

5 Before I jumped into my summation, I just want
6 to take a minute and say thank you to all of you. I know
7 you've had to take time out of your lives to be here today,
8 and that certainly is something that we appreciate. Without
9 your help we wouldn't be here to reach the bottom line here,
10 that's the facts of the case. That's why we need you. We
11 need you to determine what the facts are. So we truly
12 appreciate your participation and your serving as jurors in
13 this case.

14 Now, when the government gave you their
15 inflammatory comments and prejudicial opinions, that wasn't
16 evidence. So, too, what I say is not evidence. The
17 evidence, as you know, comes from the witnesses and it comes
18 from the documentary items that have been introduced. But
19 not all of that is relevant and I'm going to caution you
20 about that. What do I mean by that? Well, we're going to
21 run through the charges here and we're going to run through
22 each count of the indictment and I'm going to show you what
23 it means to be relevant and irrelevant. What is important,
24 what should you focus on what should you cut out, cut the fat
25 out, don't focus on those things that really have no bearing

1 on the element of the charges.

2 The prosecution has introduced a number of
3 photographs and a number of things in an effort to show that
4 Mr. Broxmeyer somehow has the propensity or proclivity that
5 he enjoys young women, that's solely presented to you to
6 inflame your opinions, your ideas, your thoughts, to shade
7 you and to misguide you from the facts in this case and from
8 how they fall into the elements. You may not like
9 Mr. Broxmeyer. You may even despise him. You may have
10 emotions that have been stirred up in you that you really
11 have an opinion about who he is and what he's like.

12 But as jurors, your sworn duty is to set those
13 opinions, those feelings aside. If you recall, during the
14 jury selection we talked about that. And you were picked for
15 a reason. You were picked for your ability to be fair, to be
16 able to identify what is relevant, what the evidence is, and
17 for your intelligence in being able to apply the facts as you
18 see them here to the law. And that's very important and your
19 duty is very serious.

20 Here your obligation isn't to replace the law
21 with your personal opinion, or your view or the public's view
22 even of what should the outcome be. You have to determine
23 the facts as you see them only as they relate to these
24 charges. Save it for another day that there may be other
25 charges out there, but that's not for you to decide. You're

1 not to decide each and every possible case or each and every
2 possible crime that might exist as a result of the evidence
3 presented for you. Your job is to sift through the evidence
4 as it exists before you and to take only that evidence that
5 supports the charge or doesn't support the charge. And when
6 you do that, you're going to find that there's problems with
7 the government's case.

8 As jurors you've promised to keep an open
9 mind. And in the beginning of this case you were asked to
10 keep an open mind, and you were told that as Mr. Broxmeyer
11 sat in at the beginning of this case, he sits there an
12 innocent man, and he does so unless and until you're
13 convinced beyond a reasonable doubt that the government has
14 proven each and every element of the crimes beyond a
15 reasonable doubt.

16 Now in this particular case we have five
17 counts. What does that mean? Well, that's five separate
18 charges. Each one of them has separate elements and each one
19 of those elements you're going to have to look to see whether
20 the evidence as it's been presented to you by the prosecution
21 supports that. What do I mean by that? Well, I'll show you
22 an example of what's not relevant. We've got a book --
23 Government's Exhibit Number 3, and that's full of stuff.
24 That's inundated with photos. That's got all kind of stuff
25 in here, pictures of girls, women. God knows what else in

1 here. And that apparently came from Mr. Broxmeyer's
2 computer, but it's not relevant. This isn't relevant or
3 material to the charges. Everything that's in here doesn't
4 have anything to do with the charge that we're going to talk
5 about. It's simply meant to show you that Mr. Broxmeyer has
6 the proclivity. That's not the proper use of this evidence.
7 The proper use of this evidence is to discard it because it
8 doesn't matter. It has no bearing on the elements.

9 I'm going to show you what does have a bearing
10 on the elements in just a minute. The burden of proof always
11 stays with the prosecution. It never shifts to Mr. Broxmeyer
12 to prove his innocence. Therefore, you can't look to him to
13 testify and he didn't testify. Why is that? Because the
14 burden is always here. It always stays here.

15 In this particular case there was a lot of
16 information, a lot of testimony that was meant to distract
17 you and possibly confuse you. Well, we're going to refocus.
18 We're going to refocus on the elements and we're going to
19 refocus on what evidence does or doesn't support the charges.
20 You cannot speculate on any of the facts here, and that's
21 what the government is asking you to do. In large part
22 they're asking you to speculate on Mr. Broxmeyer's motive.
23 On his intent. On his character. On all these things that
24 you've heard nothing about. You're also asked to speculate
25 on certain facts. You're not permitted to speculate. What

1 you have to do is base your opinion on the facts, on what is
2 admissible and relevant.

3 Admissible evidence doesn't necessarily mean
4 that it's relevant to this case, such as this. This is not
5 relevant. That has no bearing on whether or not the elements
6 of Charge One, Two, Three, Four and Five are met. That's
7 just extra stuff. And it was introduced to you to get you
8 inflamed. But let's get back.

9 There are other distractions here, not just
10 this. Monica Gombita is a distraction. Why is she a
11 distraction? She doesn't fall within any one of the elements
12 of the charge, and I'll explain to you why in a minute.
13 Brittany Branco, she's a distraction. Why is she a
14 distraction? Again, she doesn't have anything to do with the
15 charges that you have to deal with. She's simply offered to
16 inflame or show propensity. But neither one of those have
17 anything to do with any of the charges that we're going to be
18 talking about. So, when we go through this process, keep
19 that in mind that there's a lot of evidence that really isn't
20 evidence, a lot of things that had been admitted that have no
21 relevance to the charges or the elements that you have to
22 deal with.

23 Now, you could fall into the trap of saying,
24 well, you know, we heard the government's argument that
25 Mr. Broxmeyer is a pedophile, a predator, and you listened to

1 those terms and you get inflamed and you form opinions in
2 your head. Well, those are the very opinions that you have
3 to put out of your head. The very opinions that you cannot
4 let interfere with their application of what is before you,
5 and that will be the proof and the application of the law as
6 the Judge gives it to you. You cannot displace either one of
7 those. You cannot say, okay, well, I do have an opinion
8 about this whole thing and, therefore, I'm going to ignore
9 the evidence or ignore the law and convict him because we
10 just think that based upon the totality of the things we
11 heard, he's got to be guilty of something, so let's just take
12 care of it now. Can't do that. That's not your job. That's
13 why your job is difficult. Your job is difficult because you
14 have to sort that out, put it aside and then look to what it
15 is that exists.

16 So, that's what we're going to do. We're
17 going to run through the elements of the charge and I'm going
18 to show you why several of these it's very easy to decide
19 that Mr. Broxmeyer is not guilty. I'm going to begin with
20 Count One. And Count One involves Alesha Widdall, so does
21 Count Two. Doesn't involve anybody else. You've heard a lot
22 about production of child pornography. And what that is,
23 it's and underage minor, less than 18, that the defendant
24 knowingly, willfully employed, used, persuaded, induced,
25 enticed, or coerced that minor, whose identity is known --

1 here, of course, is going to be Alesha Widdall -- to engage
2 in sexual explicit conduct for purposes of producing visual
3 depictions of such conduct, and said visual depictions were
4 produced using materials that had been mailed, shipped,
5 transported in interstate or foreign commerce by any means.

6 Now, we've heard a number of other photographs
7 that were allegedly produced but we're only talking about
8 two, two photographs, and I'll show them just so you know
9 what we're talking about. As it relates to the charges,
10 there's only two pictures. Counts One and Two.

11 Count One is a picture of Alesha which you've
12 seen before. Photo number 1. This is Count One. Alesha in
13 the shower. All right. This is number 2. And I'll talk
14 about these together. Also Alesha in the shower but a
15 close-up. Just so you're aware of what photos we're talking
16 about. None of the other photos, none of them in this entire
17 case constitute Count One, Two. So we're only talking about
18 these two photos and we're only talking about Alesha Widdall.
19 Okay.

20 Now, what are the elements that have to be met
21 in order for you to find the defendant guilty of production
22 of child pornography? Well, you have to find that a minor
23 was involved. We know a minor was involved, she was 17 by
24 operation of law, she's not 18, so we know that. Here's
25 where we have a problem. The problem comes in that the

1 defendant used, employed, or otherwise coerced Alesha
2 Widdall, persuaded, induced or enticed her to engage in the
3 conduct for purposes of producing those pictures. In other
4 words, that he took affirmative acts to get her to send those
5 two pictures, Counts One and Two, of just those two pictures.

6 And what did Alesha Widdall tell us? She told
7 us a whole lot, didn't she? She took the stand and she was
8 very candid. She was very candid about the relationship that
9 took place. She wasn't hiding anything from you. Counsel
10 would have you believe she's a naive young girl, apparently
11 not worldly enough to know what she wants. Well, she seemed
12 to know what she wanted when she was on the stand, what she
13 wanted when she was participating in the sending of the
14 photographs. And whether or not she has some propensity
15 later in life that she's going to have counseling necessary,
16 that's irrelevant. It's speculative and it doesn't have
17 anything to do with the charges.

18 So, let's get back to Alesha. When we talked
19 to Alesha, she was very up front about what she said she was
20 involved with. She said, and the government had asked, you
21 know, initially, who made the first move? Then it was who
22 made the first physical move. The first move was made by
23 Alesha, as she testified to. That she was texting him over
24 and over, making sexual innuendoes, sexual comments, and she
25 did it on a repeated basis. First she said it rolled off of

1 Todd's back but eventually she began texting him sexually and
2 he began texting her back. She finally began sending photos
3 of herself. And the photos that are in Exhibit 12 and
4 Exhibit 2 were sent voluntarily, as she said, and the
5 prosecution says, well, voluntariness has no relevance.

6 One; voluntariness has every relevance. It
7 has every relevance here because it explains how they ended
8 up on Todd Broxmeyer's telephone. How else would they get
9 there if she didn't send them and she sent them voluntarily?
10 She didn't say she was induced, we went through them all,
11 coerced. She wasn't in any way threatened. She wasn't used.
12 The prosecution says she was used. I asked her did she feel
13 exploited. No. Did she feel used? Same idea. No, she
14 didn't, she was a willing participant. And these two photos
15 were sent. And were they stored in the Pix Place? Sure.
16 We're not even arguing that the materials used were shipped
17 or transported in interstate commerce.

18 So really that makes it easy for you. You
19 just look did the defendant knowingly and willfully employ,
20 use, persuade, induce or entice Alesha Widdall into sending
21 those sexually explicit, if you determine to be sexually
22 explicit, photos. Now, the prosecution also would like you
23 to believe that simply because Mr. Broxmeyer was a coach,
24 that that authority alone gave him some sort of power over
25 the girls. What did the girls tell you? They said they

1 liked it. They were having fun. They were sending the
2 pictures because they were having fun. They liked being told
3 that they were pretty. They enjoyed sending photos,
4 especially Alesha. In fact, she even engaged in this
5 so-called contest of which Todd didn't request specific
6 photos, simply that contest was a challenge, as the
7 prosecution put it, to Alesha to see if she'd send whatever
8 she wanted to send him. She said she considered that he was
9 requesting adult photos. He never said that he was looking
10 for pictures of minors or children or kiddie porn or anything
11 of that nature.

12 And the photos that we have in these exhibits,
13 Exhibit 3, all of those photos you don't have an identified
14 minor. In fact, they're adults. They're not identified
15 people at all. And it wouldn't matter anyway because this
16 doesn't have anything to do with the charges. But what are
17 we looking at that for? Did he ask for the photo from Alesha
18 Widdall? No. That's photo 1. And then photo 2, did he ask
19 for that one? No, but she sent them anyway. That is the
20 charge. That's Charge One and Two. Not anything else, so
21 keep your focus on those two photos.

22 And go back collectively when you decide
23 whether or not there was an enticement or coercion and
24 remember how she testified. She was very candid. She got up
25 here and she said over and over I did it because I wanted to.

1 I did it voluntarily. He didn't make me do anything I didn't
2 want to do.

3 Now, the prosecution says when she sent him a
4 photo of Brittany Branco, she was -- felt like she had done
5 something right. Well, that could be taken a number of
6 different ways. She's been challenged to do something. She
7 thought she accomplished whatever goal she set out to do and
8 sent it to him. Not at his request, but she thought that she
9 had done something right because she met her challenge.

10 And Brittany Branco, the purpose of her in
11 this particular case is to show what? Well, the prosecution
12 would like you to believe that he was soliciting photographs
13 through Alesha so that he could get these pictures of young
14 girls for his own personal enjoyment. But that's not really
15 what the evidence shows, because Alesha told you she went and
16 got it on her own and that Brittany Branco sent it to her.
17 And that picture of Brittany Branco, you remember, is whip
18 cream. It's whip cream or saving cream, but she's covered
19 more than most girls on the beach with a bikini. Is that
20 lewd and lascivious? That's for you to decide. But it's not
21 in the charges. So, when you're looking to the charges on
22 Counts One and Two, you're only looking at these two pictures
23 of Alesha Widdall, nothing more.

24 How about attempted production? That would be
25 Count Three. Attempted production of child pornography in

1 Count Three charges Mr. Broxmeyer that: Between in or about
2 January of 2007 through December of 2007, the defendant, Todd
3 Broxmeyer, did knowingly and willfully attempt to employ,
4 use, persuade, induce and coerce a minor, whose identity is
5 known to the grand jury, to engage in sexually explicit
6 conduct for purposes of producing a visual depiction of such
7 conduct and said visual depiction was produced using
8 materials that had been mailed, shipped, transported in
9 interstate and foreign commerce by any means, in that, during
10 that same time period, the defendant, Todd Broxmeyer,
11 attempted to employ, use, persuade, induce, entice, coerce a
12 minor female to create and produce a photograph of herself
13 engaged in, quote, sexually explicit conduct where the minor
14 female created and produced a photograph of herself wearing
15 only her underwear, with the use of a camera which was
16 manufactured outside of New York State.

17 Who's that? Let's take a look. That's her.
18 Kayla Thorp -- Katie Thorp. That's the picture. That's the
19 count. Now the question becomes: Is that sexually explicit
20 conduct? Did he entice her to engage in sexually explicit
21 conduct? I urge you to look also when you're looking at the
22 photographs, to check the dates when these things were
23 received. If you recall, the Verizon expert testified that
24 there's a stamp on the photo as it comes through and that
25 stamp indicates when that photo is posted to the Pix account.

1 Here 11/17/07, and we had some testimony from Miss Thorp that
2 there was pictures that were taken in December. But again,
3 as you go through and you look at those pictures, determine
4 for yourself based upon the stamp when they must have been
5 stamped. Sent some time before December.

6 Why is that important? Well, the prosecution
7 has introduced some text messages that suggest that
8 Mr. Broxmeyer was encouraging Miss Thorp to send her a
9 photograph. Those have nothing to do with these photographs.
10 There were no texts or pictures that were sent on December 21
11 such that they resulted in a photograph whatsoever. The
12 prosecution says we don't have to produce photographs to show
13 attempted production of child pornography, it's simply the
14 act of getting her to do that. If they have a photograph of
15 her in her underwear and she testified that she sent them
16 voluntarily, and while Mr. Broxmeyer may have asked at one
17 point for a return photo, the question becomes did he take
18 substantial steps to persuade, induce or entice her into
19 sending nude photos of herself back on the date when this
20 photo was taken. That's for you to decide. Collectively.

21 What steps were taken? Do you remember her
22 testimony? Recall her testimony. Share your thoughts and
23 your notes with each other and determine whether or not back
24 on the date in November or earlier whether those text
25 messages that were sent or the phone calls that have been

1 made, we don't have them. We don't have those. We don't
2 have any audios or taped recordings or anything relating to
3 those particular attempts, as the government would have you
4 believe, to get pictures out of Miss Thorp.

5 Monica Gombita is not part of this indictment.
6 And the photograph which you saw of her in her underwear, her
7 testimony here, it's all superfluous. Doesn't have any
8 direct bearing on the elements of whether or not on a
9 particular occasion Mr. Broxmeyer attempted to possess or
10 produce child pornography. Child pornography in Count Three
11 being picture of Miss Thorp. Keep those in mind as you're
12 going through your deliberations because we're talking about
13 a limited amount of evidence, very limited amount. Not just
14 overall this picture, not this umbrella of pedophilia, this
15 umbrella of perpetrator that's committing all these violent
16 acts against young ladies. These are specific charges for
17 which specific evidence has to support and it's up to you to
18 decide whether that supports it.

19 How about Count Four? Count Four is -- deals
20 with Kayla Mueller, and you recall her testimony. She's
21 obviously in tears up here. Scared probably her first time
22 in court. Very emotional. And that charge charges that: In
23 or about December of 2007, in the Northern District of New
24 York and elsewhere, defendant, Todd Broxmeyer, knowingly
25 caused a minor whose identity is known to the grand jury, we

1 know it is Miss Mueller, and who's at the time under the age
2 of 18, to be transported in interstate commerce from the
3 State of Pennsylvania into and through New York State, and
4 then back again from New York State to Pennsylvania, with the
5 intent that the minor engage in sexual activity for which
6 conduct defendant can be charged with a criminal offense
7 pursuant to said state statutes.

8 Well, how do we know what happened in December
9 of 2007? We have a pretty good idea because Kayla Mueller
10 testified, her father testified, and what her father said,
11 Lance Mueller, is that on a regular basis he would bring
12 Kayla Mueller up for practices. Practices that he knew were
13 run by Mr. Broxmeyer. Practices that he took his daughter to
14 that were run by Mr. Broxmeyer, and then normally he or her
15 friend's mother would take the child back to Pennsylvania.
16 There came a time in December, that was going to be on
17 December 10, and their nine-year-old was going to have First
18 Holy Communion, so there was a problem to get Kayla back to
19 Pennsylvania. The plan was always, had been that the father
20 would transport the child, Kayla, up to the practice. Kayla
21 would then go stay with Jackie Bendick and then they make
22 arrangements either to meet or get her back to Pennsylvania.

23 So, what do we know? We know that, number
24 one, Kayla begged to go to practice. She wanted to go to
25 practice. In fact, her father said it was important to her

1 so he was going to make sure she made her practice. That was
2 the purpose of her coming up. The purpose of her being in
3 New York State was not to engage in any sexual act with
4 Mr. Broxmeyer or anyone else. It was to go to hockey
5 practice. This isn't a case where Mr. Broxmeyer calls Lance
6 Mueller and says, listen, you know, I'd like you to bring her
7 up and I'm planning on having sex with her and then I'll
8 bring her home. This isn't a case where prostitutes are
9 crossing state lines or people are using young children
10 crossing state lines for purposes of prostitution. Testifies
11 nothing like that.

12 What happened here is that there was a
13 practice. Kayla Mueller wanted to go. Her father wanted her
14 to go to Todd's practice and she went. Simple as that. Then
15 on the following day, or at least on that Saturday, Kayla
16 tells us that, well, I mentioned that I -- my parents
17 couldn't come and get me and they asked if Todd could give me
18 a ride home. Not a problem. He's going down the next day
19 for practice in New Jersey. Running right by the house, as
20 Mr. Mueller told you. No big deal. Made sense to him. And
21 why not? He entrusted his daughter with Mr. Broxmeyer and
22 they went.

23 Now, Miss Mueller says that they engaged in
24 oral sex at the Sportsplex shortly after he picked her up at
25 7:30 in the morning. Yet when she returns to Pennsylvania,

1 she continues texting and talking to Mr. Broxmeyer. And I'm
2 not going to get into whether she was -- she was or wasn't
3 engaged in a sexual act with Mr. Broxmeyer. What I'm
4 focusing on here is the fact that there was no intent for
5 that child to be transported from Pennsylvania in and through
6 New York for the purposes of having sex and then returning
7 back to Pennsylvania. It doesn't fit the facts. The law
8 simply doesn't support it and the facts certainly don't. The
9 only purpose that she was up here was for field hockey and
10 there's nothing, despite the government's effort to have you
11 believe otherwise, to suggest that Mr. Broxmeyer intended to
12 transport her for purposes of having sex.

13 It's not like Mr. Broxmeyer and Mr. Mueller
14 conspired to have this child come up and knowingly made some
15 overt advances toward her. That would be ludicrous. And
16 there's no testimony to suggest that. Obviously, her father
17 transported her for one purpose alone and she was transported
18 back. But that transportation purpose of being transported
19 was not sex, but indeed practice. And Mr. Broxmeyer simply
20 took her back to the house, back to her own home. That is
21 not coming from the State of Pennsylvania into and through
22 New York State and then back again with intent that the minor
23 engage in sexual activity. That is not a federal violation.

24 Finally, Count Five, possession of child
25 pornography. Child pornography has a specific definition and

1 the Judge is going to give you that definition. And
2 obviously, you're going to have to listen very close to what
3 he tells you about child pornography and what it means to
4 have a visual depiction of a child or children engaged in
5 sexually explicit conduct. And I do urge you to listen
6 closely to that. Sexually explicit conduct, he may tell you,
7 a demonstration of the genitalia that it incites in the
8 viewer some sort of sexual response.

9 Now, you'll have to listen to his definition
10 and not take my definition because only the law as he gives
11 it to you is the law that you have to follow. But in this
12 particular case, you know we have images, sure. In fact,
13 we've got Counts One and Two, we have Alesha. But again,
14 Alesha, were those images voluntarily submitted to
15 Mr. Broxmeyer for purposes of Count One and Two? Did he
16 coerce into sending those images? No, he didn't. No, he
17 didn't.

18 And for those reasons you should find him not
19 guilty of those Counts One and Two. How about some of these
20 other photographs? We did see a photograph of Katie Thorp
21 and she tells us that, yes, that was her lower body part with
22 her finger in her vagina, and she identified that sometime
23 after the investigation commenced claiming it was shown to
24 her by the government sometime later and that she could
25 specifically identify that photo. That's again something

1 that you're going to have to decide, whether that is her
2 whether it's not her, I don't know. Whether that constitutes
3 a lascivious picture, only you can decide that.

4 A lot of testimony had been focused on the
5 fact that Mr. Broxmeyer sent a photograph of his penis to
6 various girls from time to time. We know Alesha requested
7 the photograph. We know that she asked for it for an art
8 project, is what she said, and she didn't think anything of
9 it. Either did any of the others. And there wasn't anything
10 illegal about him sending the photograph. He's not charged
11 with sending his photograph. He's charged with having
12 received child pornography on his camera and then saving it
13 to his Pix account. That's the charge.

14 Not, what photographs they received or even
15 how they reacted to it. Some of them deleted them, some of
16 them saved them, but all of them said they sent their
17 pictures for fun, especially Alesha. They weren't in any way
18 being threatened with scholarships, the loss of their hockey
19 careers or anything of that nature. And Alesha told you that
20 nobody was threatening that they were either promised
21 scholarships or threatened with scholarships if they didn't
22 participate or send pictures. That wasn't, that wasn't part
23 of the program. The scholarship program, as it had been
24 testified to, basically involved Mr. Broxmeyer attempting to
25 hone the skills of some very good players and then have them

1 go out to that festival in California where they can showcase
2 what Alesha said, their talents. And by showcasing their
3 talents, they could then make themselves available to the
4 scouts who might offer them scholarships. And Alesha told
5 you but for Mr. Broxmeyer, she wouldn't have that
6 scholarship. But for his program, she wouldn't be where she
7 is. But he never promised her anything for it and he never
8 threatened to take anything away.

9 Now, if this were twenty years ago, we
10 wouldn't be here. Didn't have cellphones with cameras on
11 them, text messaging, all that crazy stuff. Our kids today
12 get in trouble in school because of not paying attention
13 because they're text messaging back and forth to each other.
14 And it's become sort of a fad that these images and these
15 texts are being faxed back and forth and kids are talking to
16 each other via their cellphones all day long.

17 And if you think it's not all day long, take a
18 look at the exhibit. That is on December 21 of Katie Thorp,
19 and all of those text messages start in the morning and they
20 go to the wee hours of the next morning. That's a lot of
21 text messages. And if you look at Mueller's text messages.
22 Look at the meter, we're not talking just a few texts here
23 and there. This is what they do. They text message. They
24 send their pictures to each other. And we know that Katie
25 Thorp sent her picture not only to Mr. Broxmeyer, but her

1 boyfriend at the time. I guess she had a boyfriend, at least
2 that's what she testified to, that her boyfriend got that
3 same photo. And these are the things that they're doing.

4 Realistically, things have changed,
5 technologically, so have our young, so have our teens.
6 They're well advanced in use of cellphones and computers and
7 iPods and other images and things that can transport images.
8 And they're also very well aware sexually. Listen to Alesha
9 talk about a threesome. That was a little shocking, little
10 perplexing, quite frankly, but that's what we're dealing
11 with.

12 To find Mr. Broxmeyer guilty of production of
13 child pornography, you have to be convinced beyond a
14 reasonable doubt that he did knowingly and willfully attempt
15 to employ, use, persuade, induce or coerce Alesha, Alesha
16 only, into sending those photographs.

17 The attempted child pornography production,
18 you have to be convinced beyond a reasonable doubt that
19 Mr. Broxmeyer attempted to employ, use, persuade, induce,
20 entice and coerce -- not or, and -- a minor that, being Kayla
21 Thorp, you saw her in the underwear, to create a photograph
22 of herself, wearing only her underwear. And ask yourself, is
23 that a sexually explicit photo?

24 You also have to be convinced beyond a
25 reasonable doubt in Count Four that the purpose of the travel

1 with Miss Mueller coming to New York State and then back
2 again was for sexual activity with Mr. Broxmeyer. Is that
3 really what happened?

4 And then, finally, you have to be convinced
5 beyond a reasonable doubt that the defendant, Todd Broxmeyer,
6 knowingly and willfully possessed material which contains
7 images of child pornography. And I'm going to urge you to
8 listen to the Judge's instructions on child pornography. If
9 among these charges any one of the elements isn't met, then
10 you must acquit. You don't have to find Mr. Broxmeyer guilty
11 of everything or not guilty of everything. There are five
12 different counts, there are five separate charges, so you're
13 going to have to go through and apply the same ideas, the
14 same law, the same process when going through each one and
15 reaching a conclusion or a verdict on each one of the charges
16 itself.

17 Now, sure I would love for all of you to come
18 back and say, okay, we're unanimous, we find him not guilty
19 on everything. That would be great. But you're the deciders
20 of fact, so you're going to decide how many, if not all, of
21 these charges should be thrown out. And why should they be
22 thrown out? Because the law and the facts don't mix and it's
23 your duty to apply the two of them. The law as the Judge
24 gives it to you and the facts as you now know them to be and
25 the evidence that supports those facts primarily right here,

1 Exhibit 1 and 2 of Exhibit 7. Those are the primary
2 exhibits.

3 You can look at the e-mails, you can look at
4 the text messages, and you'll see there's several messages
5 back and forth. You know, if that helps you decide the case
6 as far as you know what happened, that's fine. You're
7 welcome to use all of the evidence but you're also welcome to
8 discard evidence that you don't need. You don't need it,
9 like this, don't use it. Not doing you any good reaching a
10 decision. All it does is cloud your vision, confusion you.

11 Ultimately, you're going to have to reach a
12 verdict and your verdict has to be unanimous. Again, I'm
13 going to ask that you keep an open mind, I have in the
14 beginning, and apply those presumptions of innocence and the
15 burden of proof, and in the end it's my sincere hope that
16 you'll find Mr. Broxmeyer not guilty.

17 THE COURT: Okay. Thank you, Mr. Kilker.
18 Mr. Lovric, are you prepared for your rebuttal summation?

19 MR. LOVRIC: Yes, Judge.

20 THE COURT: Okay. Fine.

21 MR. LOVRIC: Let me start with the last idea
22 of the last thought, if I may. I submit to you, folks,
23 Mr. Broxmeyer's thinking as he's presented it to you through
24 his defense, Mr. Broxmeyer's way of looking at this does two
25 things: First of all, I think it insults your intelligence

1 and, secondly, and even equally important, it's just plain
2 repulsive. If I understand Mr. Broxmeyer's view of a lot of
3 this evidence is it was the girls' fault. They're
4 promiscuous. They know a lot more about sex today than girls
5 did thirty years ago. They talk about sex more. They flaunt
6 sex. They were the ones that were out there teasing me. At
7 one point I think the defense argued it was really Alesha
8 Widdall that was hitting on Mr. Broxmeyer.

9 And as I sat there and listened to this, I
10 thought to myself, so Mr. Broxmeyer's telling you it's their
11 fault. And ladies and gentlemen I'm here to tell you, and I
12 think when you think about this, I don't care if these girls
13 did cartwheels naked with vibrators in their vaginas in front
14 of him, what he did to them is illegal and criminal. It's
15 like blaming the rape victim of the rape. Well, her skirt
16 was too short. Well, her butt was hanging out. Well, she
17 walked through the alley. She really wanted it. I find that
18 argument repulsive. I don't care what these girls were
19 doing. They could have been talking about sex all day long
20 in front of him. He is the 37-year-old adult. He is the one
21 that should have either walked away from it, call up one of
22 their parents and say, hey, Mrs. Widdall, we need to have a
23 chat. Hey, Mr. so and so, we need to have a chat, your
24 daughter's sending me stuff that's really inappropriate. Is
25 that what happened here? Absolutely not.

1 The reason for that argument is to distract
2 you from looking at his actions because his actions are the
3 ones that are on trial. And as I said before, and if you can
4 look at it, look at the law. Voluntariness has nothing to do
5 with it. I beg to disagree with counsel on that. It has
6 nothing to do. These girls cannot voluntarily send and give
7 him pictures and then him say, oh, it's not me, it's not my
8 fault. First of all, that doesn't make sense. As I said to
9 you before, it's just one big coincidence that all these
10 teenage girls send him breasts and vaginas. It's just one
11 big coincidence, no cap and gown pictures, just breasts and
12 vaginas, it's a big coincidence. Ask yourselves who's really
13 pouring on the smoke screen here?

14 And let me point out a couple of things. The
15 defense is dead wrong when they say this exhibit has nothing
16 to do with the evidence. Okay. Exhibit Number 3. All the
17 pictures on his Gateway computer. Okay. Mr. Broxmeyer,
18 through his counsel, just argued to you it's irrelevant, has
19 nothing to do with the charges. Well, do me a favor, first
20 thing when you get back there, take a look at Count Five. It
21 basically says, it charges that the defendant possessed
22 material containing images of child pornography, which were
23 produced using materials that traveled in interstate
24 commerce, the computer, the Gateway. It was manufactured in
25 some eastern Asian country. And it says that he knowingly

1 possessed computers, hard drives, cellular camera telephones,
2 iPod and other materials of child pornography.

3 Of course, Mr. Broxmeyer would like you to
4 forget about this and simply throw it out. This alone
5 convicts him of Count Five. Any images that constitute child
6 pornography that he had either on his Gateway, on his Compaq,
7 on his cellphone is a violation of Count Five. Now, the
8 defendant would like you to just not look at this stuff.
9 Says it's irrelevant. No, it's not. It's Count Five. So, I
10 don't know how he can stand up here and say it's irrelevant.
11 It's named in Count Five. You determine if this is child
12 pornography, the Judge will give you the definition.

13 Look at those pictures, and I submit you're
14 going to see pictures, you can figure out who these pictures
15 resemble. Count all the 70-year-old grandmothers that you
16 see in there. Take a look at those pictures, they're 11, 12,
17 13, 14-year-old girls engaging in sex, anal, oral
18 intercourse, every type of sex. So when Mr. Broxmeyer wants
19 you don't look at that stuff, it's not relevant, ask yourself
20 what is he arguing to you.

21 It's also relevant in other ways. And the
22 Judge will tell you that you are allowed and should consider
23 all the evidence when making decisions as to the facts and
24 the law. And I said to you before, what does this show you?
25 Well, in addition to it being a violation under Count Five,

1 possessing child porn, those images he had on Exhibit 1, his
2 Verizon Pix account, any image that constitutes child porn is
3 possession of it. The Judge will tell you what possession
4 is. He doesn't have to hold this in his hand. He possessed
5 it when he put it into his Verizon account. I will submit
6 that you find the law supports that.

7 The picture of Katie Thorp fingering in the
8 vagina the defendant says has nothing to do with this case.
9 Wrong. If Mr. Broxmeyer possessed that picture, that's a
10 violation of Count Five. Possession of child pornography.
11 Item that traveled in interstate commerce. What was it?
12 Cellphone. Made in China. When he possessed that photo of
13 her when she sent it to him, and if that's child porn, which
14 it is, she was 17 at the time, I don't know what gets to be
15 more clear about child pornography than the finger in a
16 girl's vagina, that's a minor.

17 I'm not going to go over it, but if you have
18 any question about the use, or persuade, or entice, or
19 induce, ask the Judge. Okay. Don't assume it. I submit to
20 you, you'll find the law says any one of those is sufficient.
21 Because it's or.

22 I already told you coercion is not at issue
23 here but that is not the only way this could be violated in
24 the statute. Voluntariness has nothing to do with it.
25 Consent, nowhere in the law are you going to find that says

1 if the person gave consent, then it's not a violation of law.
2 And I think I've gone over that with you, why that would
3 never make sense to have it in a law, statute that applies to
4 minors who are used in some fashion.

5 Mr. Kilker talked with you about Count Four,
6 and I respectfully have to point out something to you that I
7 believe was a misstatement of fact. In his argument to you
8 he said something to the effect that the decision for
9 Mr. Broxmeyer to drive Kayla home was made the morning of
10 December 9, and that the plan had always been for the
11 Bendicks to bring her back halfway and for her to be brought
12 back the rest of the way. That is just a dead wrong
13 statement of fact. Could be Mr. Kilker doesn't remember it,
14 but I'm going to focus on what Lance Mueller said and he's
15 the one that made these arrangements with Mr. Broxmeyer. And
16 Lance Mueller made it very clear that about two days -- in
17 fact, Mr. Kilker asked him several times on cross, it was
18 about two days before December 8 the plan had originally been
19 for Kayla to be brought back by the Bendicks halfway, and
20 then about two days before the plan changed where
21 Mr. Broxmeyer said he will drive her back to Pennsylvania.
22 It was not the morning of December 9. It was two days
23 before. And it was Mr. Broxmeyer that interjected himself
24 and said I'll take her back home to Pennsylvania.

25 And I said to you this before, you have to

1 look at all the other things about him to figure out what was
2 in his head and take a look at his actions, the other things
3 that he's done with girls. The defendant would like you to
4 say that's irrelevant. It's absolutely relevant. It's
5 relevant as to his intent. It's relevant as to what's in his
6 mind when he's doing all these other acts. You can't read
7 his mind anymore than I can. What you can do is you can
8 discern his intent by looking at his actions, his conduct.

9 And basically, what Mr. Broxmeyer did was two
10 days before Kayla came up, he decided that he was going to
11 have his way with her when she was up here. And he
12 volunteered and said I'll drive her back. And the first
13 thing he does when he picks her up, takes her to the
14 Sportsplex. You will hear the Judge tell you about the
15 purpose of the travel, and listen carefully. It does not
16 have to be the only purpose. It does not have to be that his
17 only intent or the only purpose, rather, for the transporting
18 was for him to engage in a sexual act with her. The Judge
19 will tell you one of the purposes of the transportation.

20 There's no argument here that she was being
21 brought up for practice, as far as the family is concerned,
22 but I'd like you to focus on what was Mr. Broxmeyer's intent
23 in transporting her back. It's obvious her father's intent
24 was not for something to happen to her, but her father's
25 intent is not in question. It's what was in Broxmeyer's mind

1 when Broxmeyer decided to have her transported either up by
2 the family or back by him. And that I submit to you, one of
3 the purposes that Broxmeyer had in his mind, was to have his
4 way with Kayla Mueller.

5 The defense would like you to throw up your
6 hands, oh, well, we can't make that decision because he
7 didn't telegraph anybody a written notice saying my intent
8 is. Well, ladies and gentlemen, this is where I say you have
9 to step back and look at everything about this man and then
10 you look at all the information you have in front of you and
11 you say, what's really going on in his head when he's doing
12 these actions?

13 The defense would like you to not look at
14 these photos and say they, too, are irrelevant, having
15 nothing to do with it. They're all pictures of minors or
16 breasts or other parts of their body, and again it's simply a
17 misstatement. It is absolutely relevant as to Count Five.
18 Every single picture in this case is relevant as to Count
19 Five. Every single picture as to Count Five. I'll say it
20 again.

21 The texting, I read to you the texts.
22 Defendant would like you to necessarily ignore those. The
23 reason those are important, folks, is they give you as close
24 of a picture, if I can call it that, of the inside of
25 Mr. Broxmeyer's head because that's him talking when he

1 doesn't think that he will ever see that ever again either
2 used against him or have anybody save copies of that. And
3 those text messages are very revealing because it is the
4 operation of his mind that's going on.

5 And what you can tell from looking at those
6 text messages is how badly he went after Katie Thorp to try
7 to get her to send pictures and images. He's literally
8 begging her, suggesting she go into the bathroom, not
9 realizing she's in the car, to take pictures of herself.
10 When she sends one with her clothes on, he says, yes, but now
11 with the clothes off. When she asks him about what about the
12 one, the finger, he tells her where he saved that. It puts
13 you inside of his head in a way that nobody else and nothing
14 else can, and that's why it's so relevant and that's why the
15 defense wants you so much to ignore that. Because it shows
16 you his intent, it shows you his thinking, and it shows you
17 what it was he was doing when he's communicating with these
18 teenagers.

19 I've pretty much told you what I submit or
20 suggest the facts show about Alesha Widdall. And I think, I
21 think it's a, at very best, shortsighted of the defense to
22 portray Alesha Widdall as somebody that did everything with
23 her eyes wide open and fully knowledgeable about everything
24 that was going on. At the worst I think it is a horrific
25 distortion of reality. Alesha Widdall didn't do anything

1 really voluntary. She thinks she did, but as I said to you
2 before, when she has some time in her life to reflect on
3 this, and you can see now when you reflect now on what
4 happened to her, it is clear she was used by Broxmeyer. It
5 is clear she was wrapped around his finger literally when she
6 engaged in all these activities. And just the fact that
7 Alesha Widdall said she did it voluntarily doesn't make it
8 so. It's your view of her and his actions. It's your view,
9 understanding of what happened, not hers. Because otherwise,
10 victims very often would perceive things in a personal way
11 and find it to be very, very different than perhaps the rest
12 of the world.

13 And I've said to you before, Alesha Widdall
14 possibly is one of the biggest victims in this case. And I'm
15 not trying to detract from any of the other victims, Kayla
16 Mueller, Katie Thorp or the other girls, but of all the
17 things that Alesha Widdall was put to do and put up to do by
18 Broxmeyer, it is just mind boggling how much she was used by
19 him. And it is his state of mind, not hers, that matters
20 when you decide whether when she's taking pictures and
21 sending them to him, whether he is using her, enticing her,
22 inducing her, persuading her.

23 My final comments, folks. The defense and
24 Mr. Broxmeyer in this case would like to just oversimplify
25 this to the point of saying all these things, they did this

1 voluntarily and nobody put a gun to their heads, and there
2 was no carrot, and there was no inducement by the defendant,
3 and whatever pictures happened to come into his possession
4 and across his phones, coincidentally all happened to be the
5 same type and nature and everything he has on his computer is
6 just irrelevant. And that's what it boils down to as far as
7 the defense. And I ask you when you look at this and look at
8 these facts, use your common sense. Don't step up to this
9 thinking like sometimes, as I say, like lawyers. Use your
10 common sense, because I've said this before, your collective
11 common sense can guide you better than anything else. Rely
12 on that. Sometimes step back and say what does my gut tell
13 me is really going on here? What do I really believe is
14 going on here? What really happened? What was Mr. Broxmeyer
15 really doing? Rely on that because you do it every day.

16 As I said this before, think of the things
17 that Mr. Broxmeyer did with Alesha and Katie, the challenge.
18 This is the manipulation going on. I'm asking you to find
19 him guilty of these charges because he is guilty of these
20 charges. And there is no reasonable doubt on this evidence
21 that he did not do the things that he's charged with. And
22 I'm simply asking you to hold him accountable. Thank you.

23 THE COURT: Thank you, Mr. Lovric. We're
24 going to take ten minutes, ladies and gentlemen, and I'll
25 charge you on the law.

1 (Short break taken).

2 THE COURT: See counsel at side-bar.

3 (Meeting at the bench off the record).

4 (Jury present).

5 THE COURT: All right, ladies and gentlemen.

6 In a few moments I'm going to charge you on the law. I just
7 want to explain the structure of the charge to you so it
8 might help you follow it a little easier. The first part is
9 basically an explanation of your duties as jurors. We're
10 going to talk about the burden of proof that the government
11 has. Going to talk about the kind of evidence you can
12 consider, the credibility of the witnesses. There's a fairly
13 long charge on that. Hopefully, it will help you decide
14 what's truthful and isn't truthful. And then a few other
15 small things on knowledge and intent and willfulness, and
16 then that's the end of the first part.

17 The second part is an analysis of each count
18 of the indictment, and each and every element of each crime
19 charged, and I'll analyze those for you. And that's the
20 second part of the charge.

21 And the last part merely is an instruction
22 about how you're to go about going back into the jury room
23 and organizing yourself and selecting a foreperson. That's
24 the way the charge will be as I give it to you, and I'm going
25 to begin now.

1 Now that you've heard the evidence and
2 arguments of counsel, it's my duty to instruct you on the law
3 that's applicable to this case. It's your duty as jurors to
4 follow these instructions and to apply the rules of law I
5 give you to the facts as you find them based on the evidence
6 in the case. You're not to single out one instruction alone
7 as stating the law, but you're to consider my instructions as
8 a whole. Also, you're not to be concerned with the wisdom of
9 any rule of law. You must follow the law as I give it to
10 you, regardless of any opinion that you have as to what the
11 law ought to be. Similarly, it would be a violation of your
12 sworn duty as judges of the facts to base a verdict on
13 anything but the evidence in the case.

14 You have been chosen and sworn as jurors to
15 try the issues of fact presented by the allegations in the
16 indictment and the denial made by the not guilty plea of the
17 defendant. You are to perform this duty without bias or
18 prejudice as to any party. You're not to consider any
19 party's race, religion, national origin, sex or age. The law
20 does not permit jurors to be governed by sympathy, prejudice,
21 or public opinion. Both the accused and the public expect
22 that you'll carefully and impartially consider all the
23 evidence in the case, follow my instructions, and reach a
24 just verdict regardless of the consequences. Nothing said in
25 these instructions or said or done by me during the trial

1 should convey or suggest in any manner any intimation as to
2 what verdict I think you should render. Your verdict must be
3 based on your thoughts and deliberations concerning the
4 evidence before you and the facts you find from the evidence
5 and nothing else.

6 Now, the law presumes the defendant to be
7 innocent. Thus, the defendant begins the trial with a clean
8 slate. That is, with no evidence against him. And the law
9 permits nothing but legal evidence presented to the jury to
10 be considered in support of any charge against the accused.
11 The accused must never be convicted on the basis of
12 conjecture or suspicion. It follows then, that the
13 presumption of innocence alone is sufficient to acquit a
14 defendant. The government must prove a defendant's guilt,
15 and it must prove that guilt beyond a reasonable doubt. The
16 burden of proving guilt beyond a reasonable doubt is a
17 concept very important for you to understand and needs to be
18 explained a little bit further.

19 The burden of proving guilt beyond a
20 reasonable doubt is always on the government. The government
21 must prove beyond a reasonable doubt that the defendant has
22 committed every element of each offense charged. The burden
23 never shifts to the defendant in a criminal case to prove his
24 innocence, and the law never imposes upon a defendant in a
25 criminal case the burden of calling any witnesses or

1 producing any evidence. The test is one of reasonable doubt.
2 The government need not, however, prove guilt beyond all
3 possible doubt. A reasonable doubt is a doubt based on
4 reason and common sense, the kind of doubt that would make a
5 reasonable person hesitate to act. Proof beyond a reasonable
6 doubt must, therefore, be proof of such a convincing
7 character that a reasonable person would not hesitate to rely
8 and act on it in the most important of his or her own
9 affairs.

10 Now, an indictment is but a formal method of
11 accusing a person of a crime. It is not evidence of any kind
12 against the accused. The law, however, does recognize two
13 types of evidence, as I told you Monday, that you may
14 properly use in deciding whether the defendant is guilty or
15 not.

16 One type of evidence is called direct
17 evidence. Direct evidence is testimony by a witness about
18 what is known to him or her by virtue of his or her own
19 senses; that is what the witness sees, feels, touches or
20 hears.

21 The other type of evidence is called
22 circumstantial evidence. This is evidence that tends to
23 prove a disputed fact by proof of other facts. As applied to
24 this criminal proceeding, circumstantial evidence is proof of
25 a chain of facts based upon certain circumstances indicating

1 the guilt or innocence of the accused. That's all there is
2 to circumstantial evidence. You infer on the basis of
3 reason, experience and common sense the existence or
4 nonexistence of some other fact.

5 Circumstantial evidence is of no lesser value
6 than direct evidence, and no greater degree of certainty is
7 required of circumstantial evidence than of direct evidence.
8 The law makes no distinction between the weight to be given
9 direct or circumstantial evidence. All that is required is
10 that before convicting an accused, you, the jury, be
11 satisfied of the defendant's guilt beyond a reasonable doubt
12 from all the evidence in the case.

13 During this charge you've heard me use and
14 will hear me use again the term inference. And in your
15 deliberations, and as stated, you are permitted to make
16 inferences on the basis of your reason, experience and common
17 sense. So I'll now explain the meaning of the term
18 inference.

19 During your deliberations you are to consider
20 only evidence presented in the case. The evidence in the
21 case consists of sworn testimony of the witnesses, physical
22 items, documents, exhibits, and all the facts that may have
23 been admitted into evidence. Anything you may have seen or
24 heard outside the courtroom is not evidence and must be
25 entirely disregarded. However, in your consideration of the

1 evidence, you are not limited only to what you've seen and
2 heard during this trial. You are permitted, but not
3 required, to draw from facts that you find have been proven
4 such reasonable inferences as seem justified in light of your
5 experience, reason and common sense. An inference is not a
6 suspicion or a guess. It's a reasoned, logical conclusion
7 that a disputed fact exists or does not exist on the basis of
8 another fact that you find has been proven. Inferences may
9 be drawn from both the direct and circumstantial evidence.

10 Now, the statements and arguments of counsel,
11 however, are not evidence in the case unless made as an
12 admission or stipulation of a fact. When the attorneys on
13 both sides stipulate or agree to the existence of a fact, you
14 must accept that, unless otherwise instructed.

15 It is the duty of the attorneys on each side
16 of the case to object when the other side offers testimony or
17 evidence that the attorney believes is not admissible. You
18 should not show any prejudice against the attorney or against
19 the party because of the objections that have been voiced.

20 Upon allowing testimony or other evidence to
21 be introduced over an attorney's objection, the Court does
22 not, unless expressly stated, indicate any opinion as to the
23 weight or effect of such evidence. You are the sole judges
24 of the credibility of all the witnesses and it is solely for
25 you to determine the weight and effect of all the evidence.

1 When the Court has sustained an objection, you must disregard
2 that question entirely. You may not draw any inferences from
3 the wording of the question, nor may you speculate as to what
4 the witness would have said had he or she been permitted to
5 answer. In addition, if a lawyer asks a question that
6 contains an assertion of facts, you cannot consider the
7 assertion as evidence of that fact. The lawyers' questions
8 and statements are not evidence. The witness' answers are
9 the evidence.

10 Now, in your capacity as judges of the
11 credibility of witnesses and the weight and effect of all the
12 evidence, you should carefully scrutinize all the testimony
13 given, the circumstances under which each witness has
14 testified, and every other matter in evidence that tends to
15 show whether a witness is worthy of belief. Consider each
16 witness' intelligence, motive, state of mind, demeanor and
17 manner while on the stand. Consider the witness' ability to
18 observe the matters as to which he or she has testified, and
19 whether he or she impresses you as having an accurate
20 recollection of these matters. Consider also any relation
21 each witness may bear to either side of the case, the manner
22 in which each witness might be affected by the verdict, and
23 the extent to which, if at all, each witness is either
24 supported or contradicted by other evidence in the case.

25 If you find that a witness made a prior

1 inconsistent statement, in other words, a statement made
2 before the trial that conflicts his or her trial testimony,
3 you may consider that fact in deciding how much of the trial
4 testimony, if any, to believe. In making this determination,
5 you may consider whether the witness purposely made a false
6 statement or whether it was an innocent mistake; whether the
7 inconsistency concerns an important fact, or whether it had
8 to do with a small detail; and whether the witness had an
9 explanation for the inconsistency and whether that
10 explanation appeals to your common sense.

11 Inconsistencies or discrepancies in the
12 testimony of a witness, or between the testimony of different
13 witnesses, may or may not cause you to discredit such
14 testimony. Two or more persons witnessing an incident or
15 transaction may see or hear it differently. An innocent
16 misrecollection, like failure to recollect, is not an
17 uncommon experience. In weighing the effect of a
18 discrepancy, always consider whether it pertains to a matter
19 of importance or an unimportant detail and whether the
20 discrepancy results from innocent error or intentional
21 falsehood.

22 Now, I've said previously it's your job to
23 judge the credibility of each witness. In evaluating the
24 credibility of the witnesses, you should take into account
25 any evidence that a witness may benefit in some way from the

1 outcome of the case. Such interest in the outcome creates a
2 motive to testify falsely and may sway a witness to testify
3 in a way that advances his or her own interests. Therefore,
4 if you find that any witness whose testimony you are
5 considering may have an interest in the outcome of this
6 trial, then you should bear that factor in mind when
7 evaluating the credibility of the testimony, and accept it
8 with great care.

9 Keep in mind, though, it does not
10 automatically follow that testimony given by an interested
11 witness is to be disbelieved. There are many people who, no
12 matter what their interest in the outcome of the case may be,
13 would not testify falsely. It's for you to decide to what
14 extent, if at all, the witness' interest has affected his or
15 her testimony.

16 You'll recall that some witnesses who
17 testified were law enforcement officers. The testimony of a
18 law enforcement officer is entitled to no special treatment
19 or consideration; it does not have any greater or lesser
20 weight. The testimony of a law enforcement officer who takes
21 the stand is subject to the same rules and tests applicable
22 to the testimony of any other witness regarding, for example,
23 credibility, bias, and interest in the outcome.

24 Now, you'll recall that James Thompson, a
25 computer forensic scientist, gave testimony concerning his

1 field of expertise. The Rules of Evidence provide that if
2 scientific, technical, or other specialized knowledge might
3 assist you in understanding the evidence or determining a
4 fact in issue, a witness qualified by knowledge, skill,
5 experience, training, or education may testify and state an
6 opinion concerning such matters.

7 Merely because this witness was allowed to
8 testify and express opinions and conclusions does not mean,
9 however, that you must accept his testimony. You should
10 judge his testimony like any other testimony. You may accept
11 it or reject it and give it as much weight as you think it
12 deserves, considering the witness' training and experience,
13 the soundness of the reasons given for his opinion, and all
14 other evidence in the case. The testimony is entitled to no
15 special treatment or consideration; it does not have any
16 greater or lesser weight. All witnesses who take the stand
17 are subject to the same rules and tests regarding
18 credibility, bias and interest in the outcome. You may
19 consider the soundness of the reasons given for the witness'
20 opinion and methods by which the witness reached his
21 conclusions. The testimony is given to assist you in
22 reaching a proper conclusion. It's entitled to such weight
23 as you find the witness' qualifications in the field warrant,
24 but is not controlling upon your judgment.

25 Now, the fact that the prosecution is brought

1 in the name of the United States Government entitles it to no
2 greater consideration or attention than any other party to
3 the litigation. All parties, government and individuals
4 alike, stand equal before the law.

5 As previously stated, the law never imposes on
6 a defendant in a criminal case the burden or duty to testify,
7 to call witnesses or to produce evidence. No inference of
8 any kind may be drawn and no presumption of guilt rises from
9 a defendant's decision not to testify, call witnesses or
10 produce evidence.

11 The law does not require the prosecution to
12 call as witnesses all persons who may have been present at
13 any time or place involved in the case, or who may appear to
14 have some knowledge of the matters in issue at this trial.
15 The law does not require the prosecution to produce as
16 exhibits all papers and things mentioned in the evidence.
17 You must decide this case based on the evidence or lack of
18 evidence presented, you should not be concerned with why
19 someone was not called as a witness or why certain evidence
20 was not produced.

21 In this case you're being asked to decide
22 whether the accused is guilty or not guilty of the crimes
23 charged in the indictment. You're not being asked whether
24 any other person is or may be guilty or not guilty. Your
25 verdict should be based solely on the evidence or lack of

1 evidence as to the defendant in this case in accordance with
2 my instructions and without regard to the guilt or innocence
3 of other people. It's your duty then to give separate and
4 personal consideration to the defendant and to each count
5 charged against him. In this regard, you should consider
6 what the evidence in the case shows with respect to the
7 defendant and to each offense that the defendant is charged
8 with. In sum, each count against the defendant should be
9 considered separately.

10 Now, the indictment contains a total of five
11 counts. Each count charges the defendant with a different
12 crime. You must as a matter of law consider each count of
13 the indictment and the defendant's involvement in that count
14 separately, and you must return a separate verdict on the
15 defendant for each count in which he is charged.

16 You will note that the indictment charges that
17 the offenses were committed on or about certain dates. The
18 proof need not establish with certainty the exact date of an
19 alleged offense. It is sufficient if the evidence in the
20 case establishes beyond a reasonable doubt that an offense
21 was committed on a date reasonably near the date alleged.

22 Now, before I read you the indictment filed in
23 the case and instruct you on the substantive law you are to
24 apply to the facts as you find them, I have a few closing
25 remarks. The first concerns matters relating to a person's

1 state of mind; for example, knowledge, willfulness and
2 intent. A person's state of mind is a fact that you're being
3 called upon to decide. Medical science, however, has not yet
4 devised an instrument that can record what was in a person's
5 mind in the past. Rarely is direct proof available to
6 establish a person's state of mind. Rather, a person's state
7 of mind may be inferred from what he or she says or does at
8 the time of the occurrence or nonoccurrence of certain
9 events.

10 The intent with which an act is done is often
11 more clearly and conclusively shown by the act itself, or by
12 a series of acts, than by words or explanations of the act
13 uttered long after its occurrence. Accordingly, intent, and
14 also willfulness and knowledge, is usually established by
15 surrounding facts and circumstances existing at the time the
16 act or acts in question occurred and the reasonable
17 inferences to be drawn from them.

18 Intent and motive, however, should never be
19 confused. Motive is what prompts a person to act or fail to
20 act. Intent refers only to the state of mind with which the
21 act is done or not done. Personal advancement and financial
22 gain are two well-recognized motives for much of human
23 conduct. These laudable motives may prompt one person to
24 voluntary acts of good, another to voluntary acts of crime.
25 Good motive alone is never a defense where the act done or

1 omitted is a crime. Therefore, the motive of the accused is
2 immaterial except insofar as evidence of motive may aid
3 determination of state of mind or intent.

4 I'll instruct you further on the meaning of
5 knowledge and willfulness when it becomes appropriate.

6 I will now give a brief description of the
7 case after which I'll instruct you on the substantive law you
8 are to apply to the facts as you find them. Remember, the
9 government bears the burden of proving each and every element
10 of each crime charged beyond a reasonable doubt.

11 The prosecution charges the defendant with
12 having committed certain crimes, including producing child
13 pornography, the attempted production of child pornography,
14 transporting a minor in interstate commerce to engage in
15 sexual activity, and possessing child pornography. I'll now
16 explain the charges and the law to you in detail.

17 Counts One and Two of the indictment reads as
18 follows: Between in or about January of 2007, and through
19 December of 2007, in the Northern District of New York and
20 elsewhere, Todd Broxmeyer, the defendant herein, did
21 knowingly and willfully, employ, use, persuade, induce,
22 entice, and coerce a minor to engage in sexually explicit
23 conduct for the purpose of producing a visual depiction of
24 such conduct, and said depiction was produced using materials
25 that had been mailed, shipped, and transported in interstate

1 and foreign commerce by any means, in that, during said time
2 period, the defendant Todd Broxmeyer caused the photographing
3 of a minor female engaged in sexually explicit conduct, with
4 the use of a camera which was manufactured outside the State
5 of New York. In violation of Title 18, United States Code,
6 Section 2251(a).

7 Counts One and Two of the indictment charge
8 the defendant with violating Title 18, United States Code,
9 section 2251(a), which provides in part that: Any person who
10 employs, uses, persuades, induces, entices or coerces any
11 minor to engage in any sexually explicit conduct for the
12 purpose of producing any visual depiction of such conduct,
13 shall be guilty of a crime if that visual depiction was
14 produced using materials that had been mailed, shipped, or
15 transported in interstate or foreign commerce by any means.

16 To convict the defendant of using a minor to
17 produce child pornography, the government must prove each of
18 the following elements beyond a reasonable doubt:

19 First, that the victim was a minor under the
20 age of 18;

21 Secondly, that the defendant used, employed,
22 persuaded, induced, enticed or coerced the victim to take
23 part in sexually explicit conduct for the purpose of
24 producing a visual depiction of that conduct;

25 And third, the visual depiction was produced

1 using materials that had been mailed, shipped or transported
2 in interstate or foreign commerce.

3 Now, the first element which the government
4 must prove beyond a reasonable doubt is that the victim was
5 less than 18 years old at the time of the acts alleged in the
6 indictment. The government does not have to prove that the
7 defendant knew that the victim was less than 18 years old.

8 The second element that the government must
9 prove beyond a reasonable doubt is that the defendant used,
10 employed, persuaded, induced, enticed or coerced the victim
11 to take part in sexually explicit conduct for the purpose of
12 producing a visual depiction of that conduct.

13 A visual depiction includes any photograph,
14 film, video, or picture, including undeveloped film and
15 videotape, and data stored on computer disk or by electronic
16 means which is capable of conversion into a visual image.

17 In deciding whether the government has proven
18 that the defendant acted for the purpose of producing a
19 visual depiction of the sexually explicit conduct, you may
20 consider all the evidence concerning the defendant's conduct.
21 While the government must prove that the defendant acted with
22 the purpose of producing a visual depiction of the child
23 engaged in sexually explicit conduct, it is not required that
24 the government prove that the visual depiction of that
25 conduct was actually produced.

1 The phrase sexually explicit conduct as used
2 in this element means actual or simulated sexual intercourse,
3 including genital-genital, oral-genital, anal-genital or
4 oral-anal, whether between persons of the same or opposite
5 sex; masturbation; sadistic or masochistic abuse; or
6 lascivious exhibition of the genitals or pubic area of any
7 person.

8 The term lascivious exhibition means a
9 depiction which displays or brings to view to attract notice
10 to the genitals or pubic area of children in order to excite
11 lustfulness or sexual stimulation in the viewer. Not every
12 exposure of genitals or pubic area constitutes a lascivious
13 exhibition. In deciding whether the government has proved
14 that a particular visual depiction constitutes a lascivious
15 exhibition, you should consider the following questions:

16 Whether the focal point of the visual
17 depiction is on the child's genitals or pubic area or whether
18 there is some other focal area.

19 Whether the setting of the visual depiction
20 makes it appear to be sexually suggestive, for example, in a
21 place or pose generally associated with sexual activity.

22 Whether the child is displayed in an unnatural
23 pose, or in inappropriate attire, considering the age of the
24 child.

25 Whether the child is fully or partially

1 clothed or nude, although nudity is not in and of itself
2 lascivious.

3 Whether the visual depiction suggests sexual
4 coyness other willingness to engage in sexual activity.

5 And whether the visual depiction is intended
6 or designed to elicit a sexual response in the viewer.

7 It is not required that a particular visual
8 depiction involved all of these factors to be a lascivious
9 exhibition. The importance which you give to any one factor
10 is up to you to decide.

11 The third element which the government must
12 prove beyond a reasonable doubt is that the visual depiction
13 was produced using materials that had been mailed or
14 transported in interstate or foreign commerce.

15 Simply stated, the phrase transported in
16 interstate or foreign commerce means that the materials used
17 to produce the visual depiction had previously moved from one
18 state to another or between the United States and another
19 country. Here, the government alleges that the camera used
20 to take the photographs in question was manufactured in
21 another state or country. I instruct you that if you find
22 that the camera was manufactured outside New York, that is
23 sufficient to satisfy this element. The government does not
24 have to prove that the defendant personally transported the
25 camera across the state line or that the defendant knew that

1 the camera had previously crossed the state line.

2 Now, Count Three of the indictment reads as
3 follows: Between in or about January of 2007 through
4 December of 2007, in the Northern District of New York and
5 elsewhere, Todd Broxmeyer, the defendant herein, did
6 knowingly and willfully attempt to employ, use, persuade,
7 induce, entice and coerce a minor to engage in sexually
8 explicit conduct for the purpose of producing a visual
9 depiction of such conduct and said visual depiction was
10 produced using materials that had been mailed, shipped and
11 transported in interstate or foreign commerce by any means,
12 in that, during said time period, the defendant, Todd
13 Broxmeyer, attempted to employ, use, persuade, induce,
14 entice, and coerce a minor female to create and produce a
15 photograph of herself engaged in sexually explicit conduct
16 and whereby the minor female created and produced a
17 photograph of herself wearing only her underwear, with the
18 use of camera which was manufactured outside the State of
19 New York.

20 In violation of Title 18, United States Code,
21 Section 2251(a)&(e).

22 Count three charges defendant, Todd Broxmeyer,
23 with violating Title 18, United States Code, Section
24 2251(a)&(e), which provides, in part, that it is a crime for:
25 Any person to attempt to employ, use, persuade, induce,

1 entice or coerce any minor to engage in any sexually explicit
2 conduct for the purpose of producing any visual depiction of
3 such conduct, and that visual depiction was produced using
4 materials that had been mailed, shipped or transported in
5 interstate or foreign commerce by any means.

6 See, your eyes are glazing over. Happens all
7 the time.

8 This count, that is Count Three that I'm now
9 discussing, is similar to Count One and Two that I previously
10 described to you. The difference between Count Three and
11 Counts One and Two is that in Count Three, is that Count
12 Three charges that the defendant attempted to commit the
13 subject crime. In analyzing this count, you should use the
14 definitions and explanations I previously gave you with
15 respect to Counts One and Two, in addition to the following
16 explanation:

17 To prove the charge of attempt to commit the
18 crime of production of child pornography, the government must
19 prove the following two elements beyond a reasonable doubt:

20 First, that defendant Broxmeyer intended to
21 commit the crime of production of child pornography as
22 defined for you in the previous section.

23 Second, that defendant Broxmeyer did some act
24 that was a substantial step in an effort to bring about or
25 accomplish that crime.

1 Mere intention to commit a specific crime does
2 not amount to an attempt. In order to convict the defendant
3 of an attempt, you must find beyond a reasonable doubt that
4 the defendant intended to commit the crime charged, and that
5 he took some action which was a substantial step toward the
6 commission of the crime.

7 In determining whether the defendant's actions
8 amounted to a substantial step toward the commission of the
9 crime, it is necessary to distinguish between mere
10 preparation on the one hand, and the actual doing of the
11 criminal deed on the other. Mere preparation, which may
12 consist of planning the offense or devising, obtaining or
13 arranging a means for its commission, is not an attempt,
14 although some preparations may amount to an attempt. The act
15 of a person who intends to commit a crime will constitute an
16 attempt when the acts themselves clearly indicate an intent
17 to commit the crime, and the acts are a substantial step in a
18 course of conduct planned to culminate in the commission of
19 the crime.

20 Count Four of the indictment reads as follows:
21 Between in and about January 2007 and December of 2007, in
22 the Northern District of New York and elsewhere, defendant
23 Todd Broxmeyer knowingly caused a minor to be transported in
24 interstate commerce from the State of Pennsylvania into and
25 through New York State, and then back again from New York

1 State to Pennsylvania, with intent that the minor engage in
2 sexually explicit activity for which conduct defendant is
3 charged with a criminal offense pursuant to state statutes.

4 In violation of Title 18, United States Code,
5 Section 2423(a).

6 Count Four charges defendant Broxmeyer with
7 violating Section 2423(a) of Title 18 of United States Code,
8 which provides in relevant part that it shall be a crime for:
9 A person to knowingly transport an individual who has not
10 attained the age of 18 years in interstate or foreign
11 commerce, or in any commonwealth, territory or possession of
12 the United States, with intent that the individual engage in
13 any sexual activity for which any person can be charged with
14 a criminal offense.

15 To convict defendant Broxmeyer on this count, the
16 government must prove the following elements beyond a
17 reasonable doubt:

18 First, that the defendant transported an individual
19 across a state line or border;

20 Second, that the defendant did so with the intent
21 that the individual engage in sexual activity;

22 And third, at the time, that the individual or
23 individuals at issue is under the age of 18.

24 The second element requires the government to prove
25 that one of the motives or purposes for the travel was to

1 engage in illicit sexual conduct with another person.

2 The government must show that one of the
3 defendant's motivating purposes for traveling across state
4 lines was for engaging in sexual activity with a minor.

5 While the government need not show that the illegal sexual
6 conduct was the sole or only purpose for the trip, it is not
7 enough if you find that the illegal sexual conduct was merely
8 incidental to the travel.

9 The phrase sexual act means contact between the
10 penis and the vulva or the penis and the anus. Contact
11 involving the penis occurs upon penetration, however slight.
12 The phrase sexual act also means contact between the mouth
13 and the penis, the mouth and the vulva, or the mouth and the
14 anus; the penetration, however slight, of the anal or genital
15 opening of another by a hand or finger or by any object, with
16 an intent to abuse, humiliate, harass, degrade, or arouse or
17 gratify the sexual desire of any person; or the intentional
18 touching, not through the clothing, of the genitalia of
19 another person who has not attained the age of 16 years with
20 an intent to abuse, humiliate, harass, degrade, or arouse or
21 gratify the sexual desire of any person.

22 Under Count Four, defendant may be convicted as
23 either a direct participant or under an aiding and abetting
24 theory pursuant to 18 U.S. Code, Section 2(b). What I just
25 explained to you is the direct participant theory. I will

1 now explain the aiding and abetting theory. Section 2(b) of
2 Title 18 of United States Code provides that: Whoever
3 willfully causes an act to be done which if directly
4 performed by him or another would be an offense against the
5 United States, is punishable as a principal.

6 Under the aiding and abetting theory, to meet its
7 burden of proof on the first element, it is not necessary for
8 the government to prove that the defendant himself
9 transported the individual across the state line or border.
10 Rather, under this theory, it is sufficient for the
11 government to prove that the defendant caused another person
12 to transport an individual across state lines. Therefore, if
13 the government has proven beyond a reasonable doubt that the
14 defendant caused another person to transport an individual
15 across state lines, then you may find that the government has
16 proven the first element of the offense. Of course, under
17 the aiding and abetting theory, the government must also
18 prove the second and third elements beyond a reasonable
19 doubt.

20 Count Five of the indictment reads as follows:
21 Between in or about January of 2007 through December of 2007,
22 in the Northern District of New York and elsewhere, the
23 defendant Todd Broxmeyer did knowingly and willfully possess
24 material which contains images of child pornography which
25 were produced using materials which have been mailed, shipped

1 or transported in interstate and foreign commerce by any
2 means, in that, defendant knowingly possessed computers,
3 computer hard drives, cameras and other materials containing
4 graphic images of child pornography, knowing that the images
5 contained a visual depiction and material containing a visual
6 depiction, the production of which involved the use of a
7 minor engage in sexually explicit conduct as defined in Title
8 18, United States Code, Section 2256.

9 In violation of Title 18, United States Code,
10 Section 2252A(a)(5)(B) and Section 2.

11 Count Five charges the defendant with violating
12 Section 2252A(a)(5)(B) of Title 18 of United States Code,
13 which provides in relevant part that: Any person who
14 knowingly possesses any book, magazine, periodical, film,
15 videotape, computer disk, or any other material that contains
16 an image of child pornography, that was produced using
17 materials that have been mailed, or shipped or transported in
18 interstate or foreign commerce by any means, shall be guilty
19 of a crime.

20 To convict a defendant on this count, the
21 government must prove each of the following elements beyond a
22 reasonable doubt:

23 First, that the defendant knowingly possessed a
24 visual depiction, as I will explain that term to you;

25 Second, that the visual depiction was produced

1 using materials that had been transported in interstate or
2 foreign commerce;

3 Third, that the visual depiction was child
4 pornography, as I'll explain that term;

5 And fourth, that the defendant knew of the sexually
6 explicit nature of the material and that the visual
7 depictions were of actual minors engage in that sexually
8 explicit conduct.

9 The first element which the government must prove
10 beyond a reasonable doubt is that defendant knowingly
11 possessed the visual depiction. A visual depiction includes
12 any photograph, film, video, or picture, including
13 undeveloped film and videotape, and data stored on computer
14 disk or by electronic means which is capable of conversion
15 into a visual image.

16 To possess something means to have it within a
17 person's control. This does not necessarily mean that the
18 person must hold it physically, that is have actual
19 possession of it. As long as visual depiction is within
20 defendant's control, he possesses it. If you find that the
21 defendant had actual possession of the depiction, or that he
22 had the power and intention to exercise control over it, even
23 though it was not in his physical possession, you may find
24 that the government has proven possession.

25 The law also recognizes that possession may be sole

1 or joint. If one person alone possesses it, that is sole
2 possession. However, it is possible that more than one
3 person may have the power and intention to exercise control
4 over the visual depiction. This is called joint possession.
5 If you find that the defendant had such power and intention,
6 then he possessed the depiction even if he possessed it
7 jointly with another person.

8 The government must prove that the defendant
9 possessed the depiction knowingly. An act is done knowingly
10 when it is done voluntarily and intentionally and not because
11 of accident, mistake or some other innocent reason.

12 The second element which the government must prove
13 beyond a reasonable doubt is that the child pornography was
14 produced using materials that had been transported in
15 interstate or foreign commerce.

16 I had previously explained this phrase to you and
17 you may apply that same definition here. Essentially, it
18 must be shown that the materials used to produce the child
19 pornography had previously moved from one state to another or
20 between the United States and another country.

21 The third element which the government must prove
22 beyond a reasonable doubt is that the visual depiction was
23 child pornography.

24 Child pornography means any visual depiction the
25 production of which involved the use of a minor engaging in

1 sexually explicit conduct and which portrays that minor
2 engaging in that conduct.

3 The visual depiction must be of a real person under
4 the age of 18 engaging in sexually explicit conduct. The
5 government does not have to prove the identity of the minor
6 or the exact age of the minor. You may consider all of the
7 evidence in determining whether the depiction portrayed an
8 actual person under the age of 18 engaging in sexually
9 explicit conduct.

10 I previously defined the term sexually explicit
11 conduct for you and you should apply that same definition to
12 this count.

13 The fourth element which the government must prove
14 beyond a reasonable doubt is that the defendant knew that the
15 material possessed was child pornography.

16 An act is done knowingly when it's done voluntarily
17 and intentionally and not because of accident, mistake or
18 some other innocent reason.

19 In this case, the term knowingly refers to an
20 awareness of the sexually explicit nature of the material,
21 and to the knowledge that the visual depictions were in fact
22 of actual minors engaged in that sexually explicit conduct.

23 The government must show that the defendant had
24 knowledge of the general nature of the contents of the
25 material. The defendant need not have specific knowledge as

1 to the identity or actual age of the underage performer. The
2 defendant must have knowledge or an awareness that the
3 material contained a visual depiction of a minor engaged in
4 sexually explicit conduct. Such knowledge may be shown by
5 direct or circumstantial evidence, or both. Eyewitness
6 testimony of the defendant's viewing of the material is not
7 necessary to prove his awareness of its contents; the
8 circumstances may warrant an inference that the defendant was
9 aware of what the material depicts. Furthermore, the
10 defendant's belief as to the legality or illegality of the
11 material is irrelevant.

12 After you retire to the jury room, you should first
13 select a foreperson who will preside over your deliberations
14 and speak on your behalf here in Court. Keep in mind,
15 however, that the foreperson's vote is entitled to no more
16 weight than that of any other juror. Your verdict on each
17 count in the indictment must be unanimous as to either guilt
18 or innocence. That means you all have to agree on each
19 count. Your verdict must also represent the considered
20 judgment of each juror. Each of you must decide the case for
21 yourselves, but it is your duty as jurors to consult with one
22 another and deliberate with a view toward reaching an
23 agreement if you can do so without violence to individual
24 judgment.

25 There's nothing particularly different in the way a

1 jury should consider the evidence in a criminal case from
2 that in which all reasonable persons treat any question that
3 depends on evaluation of evidence presented to them. You're
4 expected to use your good sense, to consider the evidence in
5 the case only for the purposes for which it's been admitted,
6 and to give this evidence a reasonable and fair construction
7 in light of your common knowledge of the natural tendencies
8 and inclinations of human beings.

9 Consider each charge against the defendant
10 carefully. If, as to the count you are considering, you find
11 that the government has failed to prove to your satisfaction
12 each and every element of the crime charged beyond a
13 reasonable doubt, then you must acquit the defendant on that
14 count. On the other hand, if, as to the count you are
15 considering, you find that the government has proven to your
16 satisfaction every element of the crime charged, then you
17 must convict the defendant on that count.

18 If you find that the law, as I've explained it to
19 you, has not been violated, you must not hesitate for any
20 reason to return a verdict of not guilty. On the other hand,
21 if you find that the law has been violated, you must not
22 hesitate because of sympathy or any other reason to render a
23 verdict of guilty.

24 Remember also that the punishment provided by law
25 for the offenses charged in the indictment is a matter

1 exclusively within the province of the Court and should never
2 be considered by you in any way at arriving at an impartial
3 verdict as to the guilt or innocent of the accused.

4 During your deliberations, do not hesitate to
5 re-examine your views and change your mind. Remember, you're
6 not partisans. Your duty is to seek the truth from the
7 evidence presented to you. If any reference by the Court or
8 by counsel on matters of evidence does not coincide with your
9 recollection, it is your recollection that controls your
10 decision.

11 If, during the course of your deliberations, your
12 recollection of any important part of the testimony should
13 fail, or if you should find yourself in doubt concerning my
14 instructions, you're privileged to return to the courtroom to
15 have the testimony read back to you, or have the instructions
16 explained to you.

17 Should you desire to communicate with the Court
18 during your deliberations, please put your message or
19 question in writing. The foreperson should sign the note and
20 pass it on to the Marshal who will bring it to my attention.
21 I'll then respond in writing or orally by having you return
22 to the courtroom. I caution you, however, that in your
23 communications with the Court, you should never state your
24 numerical division over an issue, if any.

25 Verdict forms have been prepared for you. After

1 you select a foreperson, you should review them. Once you've
2 reached a unanimous verdict, your foreperson should fill in
3 the verdict form, date it, and inform the marshal a verdict
4 has been reached. All right. I'm going to ask you to step
5 out into the hallway with Colleen for just a minute while I
6 make a record with the attorneys.

7 (Jury excused).

8 THE COURT: Okay. Requests, objections,
9 exceptions, emendations, deletions, any other criticism?
10 Government?

11 MR. LOVRIC: None.

12 THE COURT: Defendant?

13 MR. KILKER: Yes, your Honor. Exception to
14 the charge under Count Four which relates to the aiding and
15 abetting. I don't believe there was any testimony suggesting
16 that the defendant caused or had someone else cause to have
17 the child to be brought up into New York State. For that
18 reason I would take exception to that.

19 THE COURT: Okay. Exception noted and given.

20 MR. KILKER: Thank you.

21 THE COURT: All right. Colleen.

22 (Jury present).

23 THE COURT: Okay. At this time I'd like to
24 address the alternate jurors. Your duties as to this trial
25 are finished, and on behalf of everyone here in the

1 courtroom, I'd like to thank you for the attention you gave
2 to the matters being presented to you. It was obvious from
3 what I could see and hear about your conduct that you were
4 paying very close attention to the evidence. And we do
5 appreciate, first of all, your service. Secondly, that you
6 come down here being ready to step in to the shoes of any
7 juror who couldn't continue during the course of the trial,
8 and we needed you here. Luckily nobody left us. It happens
9 a lot of times, you'd be surprised how many times, a juror
10 doesn't finish a trial. So thanks again for being ready,
11 willing and able to step in the shoes of a juror.

12 Let me tell you now that you're free to leave.
13 And if for some wild unimaginable reason you'd like to serve
14 further on the jury, you can call the 800 number and the
15 clerk will instruct you. We do have a couple of civil trials
16 coming up at the end of the month that are different from
17 this trial, and who knows, maybe somebody would like to come
18 back again, but then again maybe you wouldn't. If you
19 wouldn't, you don't have to. You're all set. Thank you.

20 (Alternates excused).

21 THE COURT: All right, ladies and gentlemen.
22 I indicated to you that you're going to have that verdict
23 sheet brought in for you. You can review it. It's not
24 difficult; guilty or not guilty as to each count. And, of
25 course, the clerk will bring the exhibits in for you that

1 have been introduced into evidence, so you can review those
2 if needed. And since you paid close attention to the charge,
3 I'm going to give you some copies of the charge to have with
4 you. It's long and repetitive, boring, and we're going to
5 give it to you, so if you want to check back and forth as to
6 the various counts as you're considering them, you'll have
7 them right there. It's going to take a couple minutes to
8 make these, not too long we hope. Madam Clerk, you want to
9 do your duty.

10 THE CLERK: Yes. Will the marshal please come
11 forward?

12 (Marshal was duly sworn).

13 THE COURT: One last thing before you depart
14 with Al. It's now close to 3:30 and some people may so, oh,
15 do we have to stay overnight, are we being sequestered? No,
16 not in federal court that doesn't happen unless the Court
17 considers there's some very, very special circumstances. The
18 question that I will have for you, I'll send a letter around
19 ten minutes of five whether you want to go home and resume
20 your deliberations tomorrow or you want to stay and try to
21 decide the case tonight. That's something within your realm,
22 you can be thinking about that as you do your other duties
23 and deliberations. You're all set. You may begin your
24 deliberations.

25 (Jury excused at 3:30 for deliberations).

1 THE COURT: Okay. We have a question from the
2 jury. The question reads as follows. Signed by the
3 foreperson, Robert S. Miller, and it's now labeled Court
4 Exhibit 1. Is Count One only for Exhibit 1, photo 1? Is
5 Count Two only for Exhibit 2? What photos are we considering
6 for the visual depiction of Count One and Two?

7 And I guess the answer is it's photo 1 of
8 Exhibit 1 and photo 2 of Exhibit 2. Each one is being
9 considered on each respective Counts One and Two. Is that
10 right, Mr. Kilker?

11 MR. KILKER: Yes, your Honor.

12 THE COURT: Is that your understanding,
13 Mr. Lovric?

14 MR. LOVRIC: Yes, Judge.

15 THE COURT: Bring them back in.

16 (Jury present).

17 THE COURT: All right, ladies and gentlemen.
18 We have your question signed by your foreperson, Robert
19 Miller, it's labeled Court Exhibit Number 1, and reads as
20 follows: Is count One only for Exhibit 1, photo 1? Is Count
21 Two only for Exhibit 2, photo 2? Yes. Is that okay? All
22 right. Now, it's quarter of five. You guys want to stay
23 around and decide this thing or you want to come back
24 tomorrow, or haven't you decided that yet? You want me to
25 give you a few minutes to talk about that?

1 THE FOREPERSON: Give us a few minutes.

2 THE COURT: We'll send somebody in in about
3 ten minutes with that question for you.

4 (Jury excused).

5 THE COURT: Well, it appears that the jury has
6 informed us that they would like to come back tomorrow at 9
7 to begin deliberations, but in the meantime they want a
8 read-back, and they informed us they would prepare a document
9 which would indicate to us exactly what they want read back.
10 That was ten minutes ago, and whether they are talking about
11 that or something else, I have no way of knowing, but that's
12 why we're all here, to wait for that note to see what they
13 want us to read back tomorrow morning. They want to start at
14 9:00 AM, which is perfectly fine.

15 It's Court Exhibit Number 2. I'll mark it.

16 (Jury present).

17 THE COURT: Okay. Court's in session, please
18 be seated. We have the second note from you folks signed by
19 the foreperson, Mr. Miller, labeled Court Exhibit Number 2,
20 reads as follows: We would like to hear the complete
21 testimony of Alesha Widdall first thing in the morning. And
22 it was indicated to me that you'd like to come back at 9
23 tomorrow and start, is that correct? That's fine, we'll see
24 you at 9. We'll have the read-back. I have a 9:30 matter
25 scheduled, but we'll read back, you'll be glad for the break,

1 we'll read from 9 to 9:30 and give you a ten minute break
2 while I do that other procedure, and we'll come back and
3 finish that for you. You'd like to go home now and return at
4 9:00, that's fine.

5 Let me remind you not to discuss the case
6 among yourselves unless you're all assembled together, each
7 and every one, in the jury room, or with anyone else or not
8 to discuss it with you. We'll see you tomorrow morning at
9 9:00 and have a good evening. Court stands adjourned.

10 (Jury excused).

11 (Court stands adjourned).

12
13 * * *

C E R T I F I C A T I O N

I, VICKY ANN THELEMAN, RPR, CRR, Official
Court Reporter in and for the United States District
Court, Northern District of New York, DO HEREBY
CERTIFY that I attended the foregoing proceedings,
took stenographic notes of the same, and that the
foregoing is a true and correct transcript thereof.

VICKY ANN THELEMAN, RPR, CRR
Official U.S. Court Reporter

VICKY ANN THELEMAN, RPR, CRR
UNITED STATES DISTRICT COURT